THE

CODE OF CRIMINAL PROCEDURE

(ACT X OF 1882.)

AND

OTHER LAWS AND RULES OF PRACTICE

RELATING TO

PROCEDURE IN THE CRIMINAL COURTS OF BRITISH INDIA.

WITH NOTES.

BY

H. T. PRINSEP,

BENGAL CIVIL SERVICE.

LIBRARY.

SIXTH EDITION.

Calcutta:

BROWN & CO., LAW BOOKSELLERS AND PUBLISHERS,

12, GOVERNMENT PLACE.

1882.

343
P955

CALCUTTA:
PRINTED BY J. W. THOMAS, BAPTIST MISSION PRESS.

2173

BENGAL SECRETARIAT LIBRARY.

PREFACE

TO

THE SIXTH EDITION.

The present Edition has been prepared on the same lines as previous Editions. The alterations in the law have been pointed out, and such judicial rulings and orders as bear on the new Code have alone been reproduced under the sections to which they relate, but it is necessary further to explain in all of these rulings and orders, the references to various sections of the repealed Codes have been changed to the corresponding sections of the new Code. An endeavour has also been made to make the law more readily intelligible by referring generally, in the notes to each section, to their sections of the Code or other laws bearing on the same subject.

The comparative statement published by the Legislative Department showing the sections of the new Code corresponding to those of the repealed Code of 1872 and its amending Act of 1874 has also been reproduced, while as a cross reference, under each section of the new Code, the law which it professes to re-enact in whole or in a modified form is entered in brackets. It has been thought that such reference to the High Court Procedure Act, 1875, or the Presidency Magistrates' Act, 1877, would unnecessarily encumber this work, and therefore when a section of this Code re-enacts either wholly or in part one of the Code of 1872 or its amending Act of 1874, these have alone been noted.

Where judgments or orders quoted have been published, reference has been made to the Report or Government Gazette: but in many instances unpublished cases and orders have been entered in the notes. These have been obtained from official sources, and may be depended upon as strictly accurate.

The judgments of the CALCUTTA HIGH COURT have been taken from Sutherland's Weekly Reporter: the Bengal Law Reports: the Indian Law Reports and the Calcutta Law Reports published by Messrs. Brown and Co. A few cases have also been taken from the earlier reports by Mr. W. Marshall and from the Revenue, Civil and Criminal Reporter published by Messrs. Wyman and Co. The cases decided and orders passed by the MADRAS HIGH COURT have been obtained from the reports of Mr. Whitley Stokes, Mr. O'Sullivan, and Mr. J. M. C. Mills; also from the Madras Jurist, the Indian Law Reports and a publication by Mr. T. Weir, Registrar of that Court; those by the BOMBAY HIGH COURT from reports by Mr. J. Dunbar, Mr. R. T. Reid, Mr. C. F. Farran and Mr. C. W. L. Jackson as well as from the Indian Law Reports; those of the late AGRA SUDDER COURT from reports published under authority of that Court (quoted as *Agra*), those of the AGRA HIGH COURT from the reports of Moonshee Hanooman Pershad and Lalla Lalita Pershad (quoted as *N. W. P.*), and after removal of that Court to ALLAHABAD from reports by Mr. Tarrant (quoted as *Allahabad*), the Indian Law Reports, and the Legal Remembrancer edited by Mr. C. P. Hill.

The cases decided by the Punjab Chief Court have been obtained from official reports designated the Punjab Record.

Lastly the orders passed by the several Courts have been quoted from the publications of Mr. C. A. Wilkins, Registrar,

Calcutta High Court: Mr. T. Weir, Registrar, Madras High Court: a book published by the authority of the Bombay High Court; and a similar publication by Mr. Smyth, of the Punjab Chief Court.

The appendix contains nearly all the Acts of the Legislature which are intimately connected with the Code of Criminal Procedure, and these have been annotated with references to decided cases and orders likely to be useful in interpreting them.

For the Indices I am much indebted to my friend Mr. W. Gordon Leith of the Calcutta Bar.

H. T. P.

BENGAL SECRETARIAT LIBRARY.

CONTENTS.

PAGE

COMPARATIVE STATEMENT OF THE TWO CODES . . . xiii
TABLE OF CASES CITED xxvii

THE CODE OF CRIMINAL PROCEDURE.

CONTENTS 1
PREAMBLE 37

PART I.

CHAPTER I.—Preliminary, Repeal, Local Extent, and Definitions . 37

PART II.—CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.—Of the Constitution of Criminal Courts and Offices . 44
" III.—Powers of Courts . . . . . .

PART III.—GENERAL PROVISIONS.

CHAPTER IV.—Of Aid and Information to the Magistrates, the Police and Persons making arrests 70
" V.—Of Arrest, Escape and Retaking 75
" VI.—Of Processes to compel Appearance . . . 90
" VII.—Of Processes to compel the Production of Documents and other Moveable Property, and for the Discovery of Persons wrongfully confined 106

PART IV.—PREVENTION OF OFFENCES.

CHAPTER VIII.—Of Security for keeping the Peace and for Good Behaviour 112
" IX.—Unlawful Assemblies 129
" X.—Public Nuisances 132
" XI.—Temporary Orders in Urgent Cases of Nuisance . . 143
" XII.—Disputes as to Immoveable Property . . . 146
" XIII.—Preventive Action of the Police 154

PART V.—INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.— 156

PAGE

PART VI.—PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.—Of the Jurisdiction of the Criminal Courts in Inquiries and Trials 191
" XVI.—Of Complaints to Magistrates 215
" XVII.—Of the Commencement of Proceedings before Magistrates 220
" XVIII.—Of Inquiry into Cases triable by the Court of Session or High Court 223
" XIX.—Of the Charge 240
" XX.—Of the Trial of Summons-cases by Magistrates . . 255
" XXI.—Of the Trial of Warrant-cases by Magistrates . . 262
" XXII.—Of Summary Trials 270
" XXIII.—Of Trials before High Courts and Courts of Session . 279
" XXIV.—General Provisions as to Inquiries and Trials . . 328
" XXV.—Of the Mode of taking and recording Evidence in Inquiries and Trials 344
" XXVI.—Of the Judgment 357
" XXVII.—Of the Submission of Sentences for Confirmation . 364
" XXVIII.—Of Execution 367
" XXIX.—Of Suspensions, Remissions and Commutations of Sentences 391
" XXX.—Of previous Acquittals or Convictions . . . 392

PART VII.—OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.—Of Appeals 395
" XXXII.—Of Reference and Revision 410

PART VIII.—SPECIAL PROCEEDINGS.

CHAPTER XXXIII.—Criminal Proceedings against Europeans and Americans 419
" XXXIV.—Lunatics 423
" XXXV.—Proceedings in case of certain Offences affecting the Administration of Justice . . 443
" XXXVI.—Of the Maintenance of Wives and Children . 453
" XXXVII.—Directions of the Nature of a Habeas Corpus . 457

PART IX.—SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.—Of the Public Prosecutor 458
" XXXIX.—Of Bail 463
" XL.—Of Commissions for the Examination of Witnesses 466
" XLI.—Special Rules of Evidence 469
" XLII.—Provision as to Bonds 472
" XLIII.—Of the Disposal of Property 474
" XLIV.—Of the Transfer of Criminal Cases 480
" XLV.—Of Irregular Proceedings 485
" XLVI.—Miscellaneous 491

PAGE

SCHEDULE I.—Enactments repealed 513
" II.—Tabular Statement of Offences 517
" III.—Ordinary Powers of Provincial Magistrates . . 600-a
" IV.—Additional Powers with which Provincial Magistrates may be invested 601
" V.—Forms 603

APPENDIX.

ACT I, 1868 (The General Clauses' Act) 631

OATHS AND AFFIRMATIONS.

ACT X, 1873 (The Indian Oaths' Act) 633

EVIDENCE.

ACT I, 1872 (The Evidence Act) 638
" XVIII, 1872 (The Evidence Act Amendment Act) . . . 691
" XV, 1869 (The Prisoners' Testimony Act) 692

MISCELLANEOUS.

ACT III, 1880 (The Cantonments Act) 698
" V, 1861 (For the Regulation of Police) 705
" IX, 1874 (The European Vagrancy Act) 714
" XXI, 1879 (The Foreign Jurisdiction and Extradition Act) . . 724
" VI, 1864 (The Whipping Act) 728
" V, 1876 (The Reformatory Schools Act) 732
" V, 1871 (The Prisoners' Act) 736
" III, 1879 (The Destruction of Records Act) 742
Rules for Destruction of Records. 744-a

INDEX 745

ERRATA.

Page
48, last line but one *for* "142" *read* "191".
49, 11th line, *for* "49" *read* "12".
67, 13th line, *for* "cover" *read* "exceed".
74, 9th and 10th lines should be "escaped convict, or proclaimed offender".
79, 7th line from bottom, *for* "34" *read* "54".
80, 2nd para. *for* "V of 1879" *read* "IV of 1879" in three places *for* "1873" *read* "1878".
135, 14th line *after* "In re Chunder Nath Sen" *for* "I. W. R. 5 Cal. 875" *read* "I. L. R. 5 Cal. 875".
137, 2nd line from bottom, *after* "In re Chunder Nath Sen" *for* "6 Cal. L. R. 579" *read* "6 Cal. L. R., 379".
153, 2nd line, *for* "Chondronath Sen, 5 Cal. L. R. 579" *read* "Chunder Nath Sen, 6 Cal. L. R. 379".
169, 17th line from bottom, *after* "Bai Ratan" *for* "10 Bom. 366" *read* "10 Bom. 166".
202, 6th " " *omit* "and to prosecute such person up to final judgment".
204, 7th " " *after* "Bholanath Sen" *for* "I. L. R. 2 Cal. 35" *read* "I. L. R. 2 Cal. 23".
208, 3rd line from bottom *for* "power to him" *read* "power given to him".
227, 11th line, *for* "and the magistrate not to bring" *read* "and the magistrate not only to bring".
274, See 261 (c.) *for* "abatement" *read* "abetment".
278, 17th line, *after* "Karan Singh" *read* "I. L. R. 1 All 680".
284, 29th line, *after* "Gopal Dánook" *for* "6 L. R. 7 Cal. 96" *read* "I. L. R. 7 Cal. 96".
285, 26th line, *for* "But if after pleading guilty" *read* "But if after pleading not guilty".
310, 23rd line, *for* "2 Cal. I. L. R. 304" *read* "2 Cal. L. R. 304".
416, 10th line, *after* "Rajcoomar Singh" *for* "1 Cal. L. R. 382" *read* "1 Cal. L. R., 352."
455, 17th line, *for* "minors" *read* "unions".
455, 19th line, *for* "5 All. 128" *read* "4 All. 128".
475, 20th line, *after* "Anapurna Bai" *for* "I. L. R. Bom. 630" *read* "I. L. R. 1 Bom. 630".
482, last line, *for* "Nobogopal Bomb.," *read* "Nobogopal Bose".
487, 6th line from bottom, *after* "Hiramun Ayah, 21 W. R. 64" *for* "22 B. L. R. 4 App." *read* "13 B. L. R. 4 App."
489, 13th line, *for* "taken by B or the magistrate" *read* "taken by B, the magistrate".

COMPARATIVE

STATEMENT OF THE TWO CODES.

Section of old Code.	Corresponding Section of new Code.
1, para. 1 ...	1, para. 1
2 ...	2
3 ...	1
2, para. 1 ...	2, 1
2 ...	1, 2
3 ...	3, 1
4 ...	2
[1] 5, cl. 1	4, para. 1, cl. (*q*)
2	204, 1
3	4, 1, cl. (*r*)
4	28
6 ...	.....
7 ...	2, para. 2
3 ...	558, 1
4, para. 1 ..	4, 1
cl. 1	.....
2	.....
3	4, para. 1, cl. (*b*)
4	(*c*)
5	.....
6	.....
7	4, para. 1, cl. (*d*)
8	(*e*)
9	.....
10	4, para. 1, cl. (*g*)
11	(*h*)
12	(*i*)
13	337, *Expln.*
14	.....
15	4, para. 1, cl. (*q*)
16	(*q*)
17	(*t*)
18	(*s*)
19	(*r*
20	(*r*)

Section of old Code.	Corresponding Section of new Code.
[2] 4, para. 2, cl. 1	4, para. 2, cl. 1
5 ...	6
6 ...	5
7 ...	5
8, para. 1 ...	5, and 29, cl. 1
2 ...	29, cls. (*b*) and (*c*)
9 ...	26
10 ...	2, para. 2
11 ...	5
12 ...	7, para. 1, cl. 1
13 ...	2
14 ...	3
15, para. 1 ...	9, para. 1
2 ...	31, 2
16 ...	9, para. 1
17 ...	9, para. 2 31, 2 193, 2
18, para. 1 ...	9, 2 31, 3 193, 3
2[3] ...	31, 3 380, 1
19 ...	6
20, para. 1 ...	32, para. 1
2 ...	32, para. 1
3 ...	32, para. 2
Expl. ...	33, para. 1, cl. 1, and para. 2
21 ...	36, and 37, para. 1
22 ...	36
23 ...	37, and 191, para. 2
24 ...	36
25 ...	37, and 191, paras. 2 and 3

[1] See Act XI. 1874, s. 1. [2] See Act XI, 1874, s. 2. [3] See Act XI. 1874, s. 3.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
26 ...	36	49, *Proviso.* ...	.....
27 ...	37, and 191, paras. 2 and 3	50 ...	15, para. 1
		51 ...	15, para 2
28 ...	36	52 ...	16
29 ...	37	53 ...	16
30 ...	36	54 ...	41
31 ...	.....	55 ...	11
32 ...	529	56 ...	40
33 ...	532	57 ...	4 cl. (*m*)
34 ...	530		492, para 1
34, cl. (9) ...	529, cl. (*h*)	58 ...	492, para. 1
35 ...	10	59[7] ..	495
36[1] ...	39, 34, & 380, para. 1	60 ...	493
37, para. 1 ...	12, para. 1	61 ...	494
37, para. 2 ...	17, para. 1, cl. 1, and para. 3	62 ...	422, cl. 1
		63, para. 1 ...	177
3 ...	.....	2 ...	178, para. 1
38 ...	7, para 2	*Proviso*[8] ...	*Proviso*
39[2] ...	7, para. 1, cl. 2, and paras. 3, 8.	*Expl.* ...	.....
		64 ...	526, paras. 1 and 2
40, para. 1 ...	13, para. 1	*Proviso*[9] ...	.....
2 ...	2	64A[10] ...	527
3 ...	3	65 ...	179
41 ...	17 1, cl. 2	66 ...	180
42, para. 1 ...	14 1	66, *Ill.* (*a*) ...	180, *Ill.* (*a*)
2 ...	2	(*b*) ...	(*b*)
3[3] ...	3	(*c*) ...	(*c*)
43 ...	39	(*d*) ...	.....
44, para. 1[4] ...	192 1	67 ...	182
2 ...	200, *Provisos* (*a*) & (*c*).	67, *Ill.* (*a*) ..	183
3 ...	.....	(*b*) ...	.....
4 ...	528, para. 1	(*c*) ...	181, para. 1
45 1 ...	346 1	(*d*) ...	.....
2 ...	2	(*e*) ...	181, para. 2
3 ...	.....	(*f*) ...	3
4 ...	.....	68 ...	181, para. 1
46, paras. 1 & 2	349	69 ...	185
3 ...	347	70 ...	531
Ill.[5]	.....	71 ...	4, cl. (*u*)
47 1[6] ...	528, para. 1	72, para. 1 ...	443, 414
2 ...	407 2	2 ...	443
48 ...	528 2	3 ...	.....
49 ...	12 1	73 ...	445

[1] See Act XI, 1874, s. 3.
[2] Ditto ditto s. 4.
[3] Ditto ditto s. 5.
[4] Ditto ditto s. 6.
[5] See Act XI, 1874, s. 7.
[6] Ditto ditto s. 6.
[7] Ditto ditto s. 8.
[8] Ditto ditto s. 9.
[9] Repealed by Act XI, 1874, s. 10.
[10] See Act XI, 1874, s. 11.

Section of old Code.	Corresponding Section of new Code.
74, para. 1 ...	413
2 ...	416
75, para. 1 ...	447, para. 1
2[1] ...	2
3[2] ...	448
76, para. 1 ...	444, 449
2 ...	449
77 ...	450
78, para. 1 ...	.....
2 ...	451
79 ...	408, *Proviso* (*b*)
80 ...	410
81, para. 1, cl. 1	456
2	457
81, para. 2 ...	458
82 ...	2, para. 1 491
83 ...	453, paras. 1 and 3
84 ...	454
85 ...	455, 534
86 ...	2, para. 1
87 ...	463
88 ...	541
89 ...	44
90 ...	43
91 ...	42
92, cl. 1 ...	54, cl. 1
cl. *firstly* ...	cl. *firstly*
cl. *secondly* .	cl. *firstly*
cl. *thirdly*...	.....
cl. *fourthly* .	54, cl. *thirdly*
cl. *fifthly* ...	cl. *fourthly*
cl. *sixthly*	cl. *fifthly*
cl. *seventhly*	cl. *sixthly*
93 ...	57
94, cls. 1 & 2...	55
cl. 3 ...	.....
95 ...	149
96 ...	150
97 ...	151
98, para. 1 ...	152
2 ...	.....
99 ..	47 [& 2
100 ...	48, para. 1, cls. 1
101 ...	60

Section of old Code.	Corresponding Section of new Code.
102, para. 1 ...	56
2 ...	.....
103 ...	58
104 ...	351
105 ...	59, para. 1, cl. 1
106 ...	.....
107 ...	59, para. 1, cl. 2, and para. 2
108 ...	64
109 ...	156, para. 1
110 ...	155, paras 2 and 3
111 ...	1, para. 2
112 ...	154
113 ...	155, para. 1
114, para. 1 ...	157, para. 1
2 ...	156, para. 1
3 ...	2
115 ...	159
116 ...	157, para. 1, *Proviso* (*a*)
117, para. 1 ...	157, para. 1, *Proviso* (*a*)
2 ...	158
118 ...	160, 161
119, paras. 1 & 2	161
para. 3 ...	162
120 ...	168
121 ...	161, 162
122 ...	164
123, para. 1 ...	170, paras. 1 and 2
2 ...	168
124, para. 1 ...	61
paras. 2, 3 & 4	167, paras. 1, 4 & 5
125 ...	169, and 173, para. 2
126 ...	172
127, para. 1 ...	173, para. 1 170, para. 2
2 ...	173, para. 1
3 ...	.....
128, para. 1 ...	497, para. 1
2 ...	496
129 ...	498
130, para. 1 ...	170, para. 2
2 ..	3
3 ...	4

[1] See Act XI, 1874, s. 12.

[2] See Act XI, 1874, s. 12.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
130, para. 4 ...	5	158 ...	93
5 ...	172, cl. 1	*Proviso* ...	72
131, para. 1 ...	2	159, para. 1 ...	75, para. 1
2 ...	*Proviso*	2 ...	2
132, para. 1 ...	62	160, para. 1 ...	76, paras. 1 & 2
2 ...	63	2 ...	para. 3
133, para. 1 ...	174, para. 1	161 ...	77, para. 1
2 ...	2	162 ...	78
3 ...	3	163 ...	43
4 ...	4	164 ...	77, para. 2
134 ...	175	165 ...	79
135 ...	176, para. 1	166, para. 1 ...	.....
136 ...	4, para. 1, cl. (*o*)	166, para. 2 ...	65
137 ...	550	167 ...	82
138 ...	.....	168, para. 1 ...	83, para. 1 84, para. 1
139 ...	.....	2 ...	83, para. 1
140, cl. (*a*) ...	191, para. 1, cl. (*b*)	3 ...	84, para. 1
(*b*) ...	ditto	169 ...	85
(*c*) ...	191, para. 1 cl. (*a*)	170, para. 1 ...	83, para. 2 55, para. 2 86
(*d*) ...	(*c*)	2 ...	86
141, para. 1 ...	191, para. 1, cls. (*a*) & (*b*)	3 ...	86
2 ...	192	171, para. 1 ...	87, para. 1
3 ...	.....	2 ...	2
142, para. 1 ...	191, para. 1, cl. (*c*)	3 ...	87, para. 1, cl. (*c*)
2 ...	198: see also sec. 195, *et seq.*	4 ...	87, para. 3
143 ...	206, para. 1	172, para. 1 ...	88, para. 1
144, paras. 1 & 2	200, para. 1	2 ...	2
para. 3 ...	2	3 ...	4, first cl. & cls. (*e*), (*f*) & (*g*)
145 ...	201	4 ...	88, para. 6
146 ...	202	173 ...	89
147, para. 1 ...	203	174 ...	186
2 ...	403, *Expln.*	175 ...	187
3 ...	204, para. 1	176 ...	80
148, para. 1 ...	204	177 ...	46, para. 1
2 ...	90	178 ...	2
149 ...	204	179 ...	47
150 ...	90, and 204, para. 2	180 ...	48, para. 1, cl. (2)
151 ...	205	181 ...	48, *Proviso*
152 ...	68, para. 1	182 ...	50
153 ...	2	183 ...	81
154 ...	69, 70	184 ...	163
155 ...	71	185 ...	93
156 ...	90		
157 ...	186, para. 1		

Section of old Code.	Corresponding Section of new Code.
186, para. 1[1] ...	340
2 ...	340
3 ...	341
187 ...	352
188, para. 1 ...	345, paras. 1 & 2
2 ...	para. 5
189 ...	207
190 ...	208, para. 1, & 252, para. 1.
191, para. 1 ...	353
2 ...	.....
192 ...	540
193, para. 1 ...	342, para. 1
2 ...	2
Expln. ...	3
194, para. 1 ...	344, paras. 1 & 2
2 ...	496
Expln. ...	334, *Expln.*
195 ...	209, para. 1
Explns.[2] ...	209, para. 2, 210, 403, *Expln.*
196 ...	210, para. 1
197 ...	214
Expln. ...	215
198, para. 1 ...	210, para. 1 213
paras. 2 & 3...	218, para. 1, cl. 2
4 ...	218, para. 1, cl. 2, & para. 2.
199 ...	210, para. 2
200, para. 1 ...	211, para. 1
2 ...	212, 213
3 ...	211, para. 2
201 ...	548
202, para. 1[3] ...	218, cl. 1
2 ...	492, para. 2
203, para. 1 ...	241
2, 1st cl.	242
2nd cl.	246
3 ...	537
204, para. 1 ...	496
2 ...	.....
205 ...	247
206, para. 1 ...	242
2 ...	243
207 ...	244, para. 1

Section of old Code	Corresponding Section of new Code.
208, para. 1 ...	243, para. 1
2 ...	92
3 ...	247
209, paras. 1 & 2	250, para. 1
para. 3 ...	2
210 ...	248
211, paras. 1 & 2	247
para. 3 ...	366
212 ...	247
213 ...	251
214 ...	252, 256, 342, 344, 353, 496, 497, 540
215 ...	253, para. 1
215, *Expln.* 1 ...	259
2 ...	403, *Expln.*
3 ...	253, para. 2
216 ...	254
216, *Expln.* 1 ...	535, para. 1
2 ...	2
3[4] ..	254
217 ...	255, para. 1
218 ...	256
219 ...	344, para. 1
220 ...	258
Expln. ...	.....
221 ...	347
222 ...	260
cl. (1) ...	cl. (*a*)
(2) ...	(*b*)
(3) ...	(*c*)
(4) (5), (6)	(*d*)
(7) ...	(*e*)
(8) ...	(*g*)
(9) ...	(*h*)
(10)[5] ...	(*i*)
(11) ...	(*j*), (*k*)
223 ...	260
224 ...	260
225 ...	261 with cls. (*a*) & (*b*)
226 ...	262
227 ...	263
228 ...	264
229 ...	265, para. 1
230 ...	2
231[6] ...	193, para. 1
232 ..	268

[1] See Act XI, 1874, s. 13
[2] Ditto ditto, s. 14.
[3] See Act XI, 1874, s. 15.
[4] Ditto ditto, s. 16.
[5] See Act XI, 1874, s. 17.
[6] Ditto ditto, s. 18.

Section of old Code	Corresponding Section of new Code.
233, paras. 1 & 2	269, para. 1
Expln. ...	536
234, para. 1, cl. 1	Omitted
2	460
para. 2 ...	.....
235 ...	270
236 ...	274, para. 2
237, paras. 1 & 2	271
para. 2 ...	255, para. 2
238 ...	272, para. 1
239 ...	284
240 ...	276
241 ...	275
242 ...	461
243, paras. 1 & 2	277, paras. 1 & 2
para. 3 ...	279, para. 1
4 ...	276, *Proviso* 2nd 279, para. 2
244, *opening clause*	278, *opening clause*; 320
cl. (1) ...	.....
(2) ...	.....
(3) ...	.....
(4) ...	.....
(5) ...	.....
(6) ...	278, cl. (*h*)
245 ...	(*g*)
246 ...	280
247[1] ...	286
248 ...	287
249[2] ...	288
250 ...	342, para. 1.
251, paras. 1 & 2	289
para. 3	290
252 ...	292
253 ...	293
254 ...	282
255, para. 1 ...	297, and 309, para. 1
2 ...	367, *Proviso*
256 ...	298
257 ...	299
258 ...	294

Section of old Code.	Corresponding Section of new Code.
259 ...	285
260 ...	295
261 ...	309, para. 2
262 ...	309
263, para. 1 ...	300, 301
2 ...	303
3 ...	302
4[3] ...	306
5[4] ...	307, paras. 1 & 2
6[5] ...	3
264 ...	344, para. 1
265 ...	272, *Proviso*
266 ...	407, para. 1
267 ...	406
268, para. 1 ...	486, paras 1 & 2
2 ...	para. 3
269, para. 1 ...	408, para. 1
2 ...	422, cl. 1
270, para. 1 ...	408, *Proviso* (*a*)
2 ...	para. 1
3 ...	408, *Proviso* (*a*) and 410
271, para. 1[6] ...	410
2[7] ...	418 and 423, *cl.* (*d*)
271A, para. 1[8] ...	371, para. 3
2[9] ...	.....
271B[10] ...	378, 429
272, para. 1 ...	417
2, cl. 1	417
2, cl. 2[11]	.....
3 ...	423
273, para. 1 ...	413
2 ...	413, *Expln.*
3 ..	412
274, para. 1 ...	414
2[12] ...	415
3 ...	416
Expln.[13] ...	415 *Expln.*
275 ...	419
276[14] ...	548
277 ...	420
278, para. 1 ...	421, para. 1

[1] See Act XI, 1874, s. 19.
[2] Ditto ditto, s. 20.
[3], [4] and [5] Ditto ditto, s. 21.
[6], [7], [8], [9] and [10] Ditto ditto, s. 22.
[11] See Act XI, 1874, s. 23.
[12] and [13] Ditto ditto, s. 24.
[14] Ditto ditto, s. 25.

Section of old Code.	Corresponding Section of new Code.
278, para. 2 ...	421, para. 2
3[1] ...	Om. see secs. 421, 423
279, cl. 1 ...	422, cl. 1
cl. 2[2] ...	2
280[3] ...	423
Proviso ...	.....
281 ...	426
282, para. 1 ...	428, para. 1
2 ...	404
3 ...	428, para. 2
4 ...	428, para. 3
5 ...	.....
283, para. 1 ...	537
2 ...	537
3 ...	.....
284 ...	423, cl. (*b*)
285 ...	430
286 ...	404
286, *Illustrations*	.....
287, para. 1 ...	374
2 ...	367, para. 5
288 ...	376
289, para. 1 ...	375, para. 1, 428, p. 1
2 ...	2, 428, p. 3
3 ...	3, 428, p. 2
290 ...	377
291 ...	.....
292 ...	553
293 ...	553
294 ...	435, para. 1
295, para. 1 ...	1
2 ...	.....
296, para. 1 ...	438
2[3] ...	436, *cl.* 1
Proviso[3] ...	436, *Proviso* (*b*)
297[5] ...	439
297, para. 8 ...	426, para. 1
297, para. 10 ...	440
298[6] ...	437
299, para. 1 ...	425, para. 1 442
2 ...	425, para. 2 442

Section of old Code.	Corresponding Section of new Code.
299, para. 3 ...	423, *cl.* (*d*)
300 ...	537
301, para. 1 ...	379
2 ...	381
302, para. 1 ...	373
2 ...	.....
3 ...	.....
302 A,[7] para. 1 .	383
2 .	390
303 ...	384
304, para. 1 ...	386
2 ...	.....
305 ...	400
306 ...	382
307, para. 1 ...	386
2 ...	387
3 ...	.....
4 ...	389
308, paras. 1, 2 & 3	545
4 ...	546
309, para. 1 ...	.....
1 *Prov.*	33, para. 1, *Proviso* 2
2 ..	33, para. 1, with *Proviso* 1
310 ...	391, para. 1
311, para. 1 ...	392
2 ...	392, para. 2
3[8] ...	391, para. 2
312, paras. 1 & 2[9]	394
para. 3 ...	393
313 ...	395
314, para. 1 ...	35, para. 1
2 ...	2
2, *Prov.* 1	2, *Prov.* 1
2, *Prov.* 2	2, *Prov.* 2
315 ...	348
316 ...	396
317 ...	397
Proviso ...	398
318 ...	399
319 ...	368, para. 2

[1] See Act XI, 1874, s. 26.
[2] Ditto ditto, s. 27.
[3] Ditto ditto, s. 28.
[4] See Act XI, 1874, s. 29.
[5] Ditto ditto, s. 30.
[6] Ditto ditto, s. 31.
[7] See Act XI, 1874, s. 32.
[8] Ditto ditto, s. 33, para. 1.
[9] Ditto ditto, s. 33, para. 2.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
320 ...	.....	347 ...	337
321 ...	368	348 ...	338
322, para. 1[1] ...	401, para. 1	349 ...	339
2 ...	3	350 ...	.....
3 ...	402	351 ...	540
4, cl. 1[2]	401, para. 4	352 ...	90
cl. 2[3]	.....	353, para. 1 ...	87, paras. 1, 2, cl. (*b*)
323 ...	509	2 ...	88, para. 1
324 ...	255, para. 2	3 ...	2
325, para. 1 ...	510	354 ...	89
2 ...	.....	355 ...	90
326 ...	511	356 ...	485
327 ...	512	357, para. 1 ...	208, para. 2
328 ...	350, para. 1	2 ...	219
329 ...	350, para. 1	358 ...	216, para. 1
330, para. 1 ...	503, para. 1	359 ...	216, *Prov.* 2
2 ...	503, paras. 1 & 3	360 ...	217
3[4] ...	504, para. 1	361 ...	244, paras. 2 and 3
4[5] ...	505	362, para. 1 ...	208, para 2 25 , para. 2
5 ...	506	2 ...	208, para. 2 257, para. 1
6[6] ...	507	363 ...	291
331 ...	.....	364 ...	485
332 ...	354	365 ...	94, para. 1
333 ...	355	366 ...	96
334, para. 1 ...	356, para. 1	367 ...	104
paras. 2 & 3	2	368, para. 1 ...	96
para. 4 ...	3	2 ...	97
5 ...	4	369, cl. 1 ...	96, para. 2
335 ...	357, and 362, para. 1	2 ...	95
336 ...	358	370 ...	101
337 ...	555	371 ...	101
338 ...	359, and 362, para. 2	372 ...	101
339 ...	360	373, para. 1 ...	101
340 ...	361	2 ...	99
341 ...	363	3 ...	.....
342 ...	342, para. 1	374 ...	99
343 ...	2	375 ...	101
344 ...	343	376, para. 1 ...	101
345 ...	342, para. 4	2 ...	101
346, para. 1 ...	364, para. 1	3 ...	101
2 ...	2	4 ...	101
3 ...	3	377 ...	98, except cls. (*d*) *and* (*e*)
4 ...	2		
5 ...	583		

[1] See Act XI, 1874, s. 34.
[2] Ditto ditto, s. 34.
[3] See Act XI, 1874, s. 34.
[4] Ditto ditto, s. 35.
[5] See Act XI, 1874, s. 35.
[6] Ditto ditto, s. 35.

Section of old Code.	Corresponding Section of new Code.
378, para. 1 ...	... ...
2 ...	105
379[1] ...	165
380 ...	166
381 ...	153
382 ...	102, para. 1
383 ...	2
384 ...	2
385 ...	103
386 ...	52
387, para. 1 ...	51, para. 1
2 ...	523, para. 1
388 ...	496
389, para. 1 ...	497, para. 1
2 ...	2
390 ...	498
391 ...	499
392 ...	501
393 ...	496
394 ...	500
395 ...	502
396 ...	514, paras. 1, 2 & 3
397, para. 1 ...	514, para. 1
2 ...	2 & 3
3 ...	4
398, para. 1 ...	514, paras. 1 to 4
1, *Prov.*[2]	para. 5
2 ...	515
3 ...	516
399 ...	513
400, para. 1 ...	321, para. 1
2 ...	2
401, para. 1 ...	322[1]
2 ...	323
402 ...	324, paras. 1 to 4
403 ...	325
404 ...	319
405, cl. 1 ...	278, 320
2 ...	278, cl. (*d*)
3 ...	(*e*)
4 ...	(*f*)
5 ...	278, 320
6 ...	278, cl. (*c*)
406, para. 1, cl. 1	320, cl. 1

Section of old Code.	Corresponding Section of new Code.
406, para. 1, cl. 2	(*a*)
3	(*b*)
4	320, cl. (*c*)
5	(*d*)
6	(*e*)
7	278, 320
8	320, cl. (*g*)
9	(*h*)
10	(*i*)
11	(*f*)
12	(*j*)
406, para. 2 ...	278, 320
3 ...	278, 320
4 ...	462, *Proviso.*
407 ...	326
408, para. 1 ...	462, para. 1
2 ...	2
3 ...	3
4 ...	.....
409, para. 1 ...	328
2 ...	Chapter VI,—A
3 ...	Ditto
410 ...	327
411 ...	329
412 ...	330
413 ...	331
414 ...	332
415, para. 1 ...	523, para. 1
2 ...	525
416 ...	523, para. 2
417, para. 1 ...	524, para. 1
2 ...	2
418[3] ...	517, para. 1
418, *Expln.*[4] ...	517, *Expln.*
419 ...	520
420 ...	518
421 ...	544
422 ...	513
423 ...	464
424, para. 1 ...	469
2 ...	469
3 ...	464
425, para. 1 ...	465, para. 1
2[5] ...	2

[1] See Act XI, 1874, s. 36. [3] See Act XI, 1874, s. 38. [5] See Act XI, 1874, s. 39.
[2] Ditto ditto, s. 37. [4] Ditto ditto, s. 38.

Section of old Code.	Corresponding Section of new Code.
426 ...	466
427 ...	467
428 ...	468
429 ...	470
430 ...	471
431 ...	472
432 ...	473
433 ...	474
434 ...	475
435, para. 1 ...	480
paras. 2 & 3	481
436, para. 1 ...	482, para. 1
2 ...	2
3 ...	347
4 ...	.....
437 ...	484
438, para. 1 ...	445
2 ...	447, para. 1
439 ...	221
440 ...	222
441 ...	223
442 ...	554
443 ...	225
444 ...	227
445 ...	227
446 ...	226
447 ...	228
448 ...	229
449 ...	231
450 ...	230
451[1] ...	232
452 ...	233
453 ...	234
454, paras. 1 to 3	235
454, *Ill.* (*a*) ...	235, *Ill.* (*a*)
(*b*) ...	(*d*)
(*c*) ...	(*e*)
(*d*) ...	(*f*)
(*e*) ...	.....
(*f*) ...	235, *Ill.* (*g*)
(*g*) ...	(*h*)
(*h*) ...	.....
(*i*) ...	.....
(*j*) ...	235, *Ill.* (*i*)

Section of old Code.	Corresponding Section of new Code.
454, *Ill.* (*k*) ...	.....
(*l*) ...	235, *Ill.* (*j*)
(*m*) ...	(*l*)
(*n*) ..	(*b*)
(*o*) ...	(*m*)
(*p*) ...	(*c*)
455 ...	236
456 ...	237
457 ...	238, para. 1
457, *Ill.* (*a*) ...	238, *Ill.* (*a*)
(*b*) ...	.....
458 ...	239
459 ...	240
460, para. 1 ...	403, para. 1
2 ...	2
3 ...	3
4 ...	4
Ill. (*a*) ...	*Ill.* (*a*)
(*b*) ...	(*b*)
(*c*) ...	(*c*)
(*d*) ...	.....
(*e*) ...	403, *Ill.* (*d*)
(*f*) ...	(*e*)
(*g*) ...	(*f*)
(*h*) ...	(*g*)
461, cl. 1 ...	367, para. 2
2 ...	3
462 ...	366
463 ...	367, para. 1
464, para. 1 ...	367, paras. 1, 2 & 4 369
2[2] ...	371, para. 1
3 ...	372
4 ...	367, para. 5, *Prov.*
5 ...	.....
6 ...	537
7[3] ...	537
465 ...	196
466, paras. 1, 2 & 3	197, para. 1
4 ...	2
5[4] ...	4, last para.
467 ...	195, para. 1, cl. (*a*)
468 ...	(*b*)
469 ...	(*c*)

[1] See Act XI, 1874, s. 40.
[2] Ditto ditto, s. 41.
[3] See Act XI, 1874, s. 41.
[4] Ditto ditto, s. 42.

Section of old Code.	Corresponding Section of new Code.
470, para. 1 ...	195, para. 2
2 ...	3
470, *Expln.* ...	.....
471, paras. 1 & 2	476, para. 1
3	2
472, para. 1 ...	477, para. 1
2 ...	.....
3 ...	477, para. 2
473 ...	487, para. 1
474, paras. 1 & 2	478
3	.....
475 ...	479
476 ...	478, para. 2
477 ...	476
478 ...	199
479 ...	199
480 ...	127
481 ...	128
482 ...	129
483 ...	132, cl. (*a*)
484 ...	130
485 ...	132, cl. (*b*)
486 ...	(*d*)
487 ...	131, and 132, cl. (*b*)
488 ...	132, cl 1
480 to 488 (Ch. XXXVI)[1]	127 to 132 (Ch. IX)
489, para. 1 ...	106, para. 1 123, paras. 1 to 3
2 ...	120, para. 1
3 ...	.....
4 ...	.....
490 ...	106, para. 1 123, paras. 1 to 3
491 ...	107
Explns. ...	107, 117
492 ...	112
492, *Expln.* ...	113
493, para. 1, cl. 1	551
2	106, para. 1, last cl., & 118, *Prov. 2nd.*
2 ...	.....
494 ...	90
Proviso ...	108, para. 1 114, *Proviso.*

Section of old Code.	Corresponding Section of new Code.
495 ...	116
496 ...	119
497 ...	118, para. 1 123, para. 1
498, para. 1 ...	107, 123
2 ...	123
499, para. 1 ...	.....
2 ...	.....
3 ...	123, paras. 1 & 4
Expln. ...	.....
500 ...	124, para. 1, & 125,
501 ...	126
502, para. 1 ...	514, para. 1
2 ...	2
3 ...	3
4 ..	4
5 ...	1
6 ...	121
7 ...	107, 514
503, para. 1 ...	514, para. 1
2 ...	2 & 3
3[2] ...	4
504, para. 1 ...	109
2 ...	120, para. 1
3 ...	.....
4 ...	109
505 ...	110
506 ...	110
507, para. 1 ...	123, para. 2
2 ...	3
508 ...	123, para. 3
509, para. 1 ...	112
2 ...	551
510, para. 1 ...	123, para. 1
2 ...	5
511 ...	124, para. 1
512 ...	2
513 ...	126
514, para. 1 ...	514, para. 1
2 ...	paras. 2 & 3
3 ...	para. 4
515, para. 1 ...	112, 114
2 ...	109
3 ...	117, para. 2
4 ...	511

[1] See Act XI, 1874, s. 43.

[2] See Act XI, 1874, s. 44.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
516 ...	122	525, part. 2 ...	141, para. 3
517 ...	111	526, para. 1 ...	139, para. 1 140, para. 1
518, with *Expln.* 1	144, para. 1		
518, *Expln.* 2 ...	2	2 ...	140, para 2
3 ...	3	527[1] ...	137, para. 2
4 ...	4	528 ...	142
519 ...	143	529 ...	1, para. 2
520 ...	435, para. 3	530 ...	145
521 ...	133	531 ...	146
522 ...	134	532 ...	147
523, para. 1 ...	135	533 ...	148, para. 1
2 ...	138, cl. (*a*)	534 ...	522
3 ..	139	535 ...	1, para. 2
4 ...	141	536 ...	488
5 ...	138, cl. (*c*), and 139	537 ...	489
524, para. 1 ...	138, cl. (*b*)	538 ...	490
2 ...	.....	539 ...	558, para. 1
525, para. 1 ...	136, & 137, para 1 140, para. 2.	540 ...	1, para. 2
		541 ...	1, para. 2

Table shewing correspondence of the section-numbers of Act XI of 1874 separately with those of the present Code, Act X of 1882.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
1 ...	4, cls. (*q*) & (*r*) 28, 204, para. 1	14 ...	209
		15 ...	218, cl. 1
2 ...	4, para. 2, cl. 1	16 ...	254
3 ...	380, para. 1	17 ...	260, cl. (*i*)
4 ...	7, para. 1, cl. 2, para. 3	18 ...	193, para. 1
		19 ...	286
5 ...	14, para. 3	20 ...	288
6 ...	192, para. 1, 528, para. 1	21 ...	306, para. 1, 307
		22, cl. 1 ...	410
7 ...	.....	2 ...	418, 423 cl. (*d*)
8 ...	495	3 ...	371, para. 3
9 ...	178, *Proviso.*	4 ...	.....
10 ...	.....	5 ...	378, 429
11 ..	527	23 ...	.....
12 ...	447, para. 2, 448	24, cl. 1 ...	.....
13 ...	340	2 ...	415, *Expln.*

[1] See Act XI, 1874, s. 45.

Section of old Code.	Corresponding Section of new Code.	Section of old Code.	Corresponding Section of new Code.
25 ...	548	34, cl. 3 ...	.....
26 ...	Om., see secs. 421, 423.	35 ...	504, para. 1, 505, 507
27 ...	422, cl. 2	36 ...	165, para. 4
28 ...	423	37 ...	514, para. 5
29, cl. 1 ...	436, cl. 1	38 ...	517, para. 1 & *Expln.*
2 ...	*Proviso* (*b*)	39 ...	465, para. 2
30 ...	439	40 ...	232, *Ill.*
31 ...	437	41 ...	371, para. 1, 548
32 ...	383, 390	42 ...	4, last para.
33 ...	391, para. 2, 394	43 ...	Chapter IX
34, cl. 1 ...	401, para. 1	44 ...	514, para. 4
2 ...	4	45 ...	137, para. 2

INDEX OF CASES CITED.

A.

PAGE

Abdool Azeez, 7 W. R., 59 68
Abdool Guffoor, 10 Cal. L. R., 51 228
Abdool Kadir, 11 B. L. R., 8 App. 225, 262
Abdool Kadir, 3 Cal L. R., 44 I. L. R., 4 Cal., 16 272
Addoor Bari, 25 W. R., 50 120
Abdur Ruhman *v* Sukhina, 5 Cal. L. R., 21 I. L. R., 5 Cal., 558 ... 455
Abheem Parirah, 20 W. R., 17 273
Abul Hossein, I. L. R., 1 All., 497 ... ... 209, 445
Acharjee Lall, 3 Cal. L. R., 87 256
Achiraj Lall, I. L. R., 4 Cal., 603 74
Affazooddeen, Suth. Rep. 1864, p. 13 350
Ahmed Ali, 22 W. R., 42 74
Amanoolla, 21 W. R., 49, 12 B. L. R. 15 App.... 295
Amanut Khan *v.* Khoda Buksh, 1 Leg. Rem, 148 260
Amarut Sheikh, 4 W. R., 20 ... ... 729, 731
Ambigara Hulagu, I. L. R.. 1 Mad., 694 654
Amrita Govinda, 10 Bom., 497 653
Amritho Nath Jah, 6 W. R., 6 148
Anand Sarup, I. L. R., 3 All. 363 F. B. 70
Annaji Krishna, Bom. H. Ct., Apl. 24, 1873 341
Annapurna Bai, I. L. R., 1 Bom., 630 ... ... 475, 477
Antoine Jose, Bom. H. Ct. Sept. 4, 1869, *Rdn. in Chamb.*, ... 404
Anunt Ram Singh, I. L. R., 5 Cal., 954 F. B. 168
Anwar Khan valad Gulkhan, 9 Bom., 172 67
Arjun Megra, 11 Bom., 281 295
Asanoolla, 13 W. R., 15 299
Asgur Ali, I. L. R., 2 All. 260 325
Asgur Hosein, 8 Cal. L. R., 124 I. L. R., 6 Cal. 774 658
Ashootosh Chuckerbutty, I. L. R., 4 Cal., 484 F. B. 654
Ashroff Ali, I. L. R., 5 Cal., 281... ... ... 209, 445
Assan Shurreef, 13 W. R., 75 68
Aurokiam, Mad. H. Ct., Nov. 29, 1869 417
Azeemoolla, 2 Punj., Rec. 80 448

B.

B. Kristna Ran, 7 Mad. 58 212
Babaji Setaram, 11 Bom., 34 209
Baban Khan valad Mhaskoji, I. L. R., 2 Bom., 142 ... 244, 245
Baboo Lall and Duttee Lall *v.* Lieut. Horsford and Narain Singh Katwall, ... 84
Bahardur Singh, 5 All., 128 455
Baijoo Chowdhry, 25 W. R., 45 654
Baijoo Lall, I. L. R., 1 Cal., 450 ... ... 208, 209, 444

PAGE
Baikoontonath Banerjea, 3 B. L. R., 3 F. B. 327
Bai Ratan, 10 Bom., 166 489
Bakhowree Singh, 8 W. R., 207, *Civ. Ca.* 169, 104
Bakku, Punj. Rec., 1874, p. 3 278
Bala Patel, I. L. R., 5 Bom., 63 653
Baldao Sahai, I. L. R., 2 All., 253 266
Balaji Sitaram, 11 Bom., 34 210
Banee Madhub Dass, 23 W. R., 3 272
Bapji Valad Bapia, 4 Bom., 5 *Cr. Ca.* 731
Baroda Kant Roy, 4 Cal. L. R, 452 123
Baroda Pershad Moostafee *v.* Gorachand Moostafee, 12 W. R., 160 135
Baroda Prosunno Chuckerbutty, 2 Cal. L. R., 348 52
Bebheki Pathak, 21 W. R., 12 114
Becharam Ghorooee, 14 W. R., 117 135
Bechoo Manjee, 9 W. R., 16 ... ... 165, 648, 651
Begum *alias* Elahee Jan., 6 Agra, 136 193
Behary Lall Bose, 7 W. R., 44, 6 Cal. L. R., 431 ... 325, 333, 493
Behary Singh, 7 W. R., 3 ... ... 82, 87, 162, 172
Belat Ali, 10 B. L. R., 453, 19 W. R., 67 654
Belilias, 19 W. R, 53 ... ... 219, 265
Beputoolla, 2 Cal. L. R., 374 272
Bhawan, I. L. R., 1 All., 661 654
Bhikaree, 15 W. R., 63 356
Bhobaneshwar Dutt, 2 Cal. L. R., 80 92
Bhoirub Seal, Suth. Rep. 1864, p. 27 67
Bholanath Ghose, 7 Cal. L. R., 516 149
Bholanath Sen, I. L. R., 2 Cal. 23, 25 W. R., 57 ... 53, 204, 412, 510
Bhostnath Dey, 4 Cal. L. R., 405 490
Bhukan Rajwan, 12, W. R., 49 293
Bhyro Dyal Singh, 11 W. R., 46 144
Bichuk Aheer, 6 W. R., 5 67
Biddumukee Debee 6 B. L. R., 129 App. 95
Bimmanjee, 6 W. R., 52 175
Bindabun Shaha, 10 W. R., 41 115
Bireshuree Prashad, 6 W. R., 93 115
Bisheswar Shaha, 23 W. R, 65 261
Bishonath Mundul, 2 W. R., 58 504
Bishoo Barik, 16 W. R., 77 ... ... 209, 445
Bishto Chunder Chuckerbutty, 10 W. R., 27 ... ... 134, 137
Bishumber Dass, 15 W. R., 122, 6 B. L. R., 122 App. 471
Bissonath Sircar, 3 W. R., 63 104
Bissorunjan Mookerjee, 6 W. R., 65 655
Biyogi Bhagut, 4 Cal. L. R., 134 ... ... 209, 415
Boidonath Dass, I. L. R., 3 Cal., 366 F. B. 73
Bonomaree Sahai, 5 W. R., 32 156
Bowka Hari, 22 W. R., 35 330
Brijendro Lall, 20 W. R., 86 142
Brindabun Chunder Dutt, 23 W. R., 15 139
Brindabun Dutt, 22 W. R., 47 138
Budhu Nanku, I. L. R., 1 Bom., 475 ... ... 651, 678, 683

PAGE
Budrool Hosein, 24 W. R. 51 82
Bugleh Ali, 22 W. R., 65 272
Burdwan, Maharaja of, I. L. R., 5 Cal. 194; 4 Cal. L. R., 324 ... 153
Burkutoollah Khan, I. L. R., 1 All., 17 F. B. 210
Bushmo Aurut, 1 W. R., 21 313
Byha Wullud Soorjim, 1 Bom., 91 345
Bykunto Nath Banerjea, 10 W. R., 17, 2 B. L. R., 3 F. B. ... 326, 683

C.

Calder *v.* Halkett, 2 Moo. Ind. Ap., 293 425
Chackrader Potti, 8 Cal. L. R., 289 ... ... 209, 445
Chand Khan, 2 Leg. Rem., 183 ... ... 231, 248, 254
Chand Nur, 11 Bom., 240 253
Chamaro Malo, 8 W. R., 85 115
Chamroo Roy, 7 W. R., 35 104
Chanda Chandalinee, 24 W. R., 55 682
Changra Valad Sharmia, 7 Bom., 68 *Cr. Ca.* 729
Chapper Menon, 4 Mad., 126 448
Chatterput Singh, 5 Cal. L. R., 200 149
Cheddu, 2 Leg. Rem., 34 I. L. R., 3 All., 573 680
Cheyt Ram, 5 All., 110 284
Cheyt Singh, 22 W. R., 70 123
Chineebash Ghose, 1 Cal. L. R., 436 333
Chintamoni Bapoohee *v.* Degumber Mitter, 2 B. L. R., 15 135
Choda Atchama, Mad. H. Ct. 652
Chokoo Khan, 5 W. R., 70 293
Choolai Telee, 2 Cal. L. R., 315 209
Choto Hurree Paramanick Tantee, 15 W. R., 5 448
Choto Shadoo Peada, 9 W. R., 3 445
Chunder Bhon Singh, 17 W. R., 10 104
Chunder Nath Deb, 5 Cal. L. R., 372 407
Chunder Nath Sen, I. L. R., 5 Cal., 875; 6 Cal. L. R., 379 ... 135, 144, 153
Chunder Madhub Ghose *v.* Juggesh Chunder Sen, 4 Cal. L. R., 483 ... 147
Chunder Seekor Sookul, 1 Cal. L. R., 434 272
Chunder Seekor Thakoor, 22 W. R., 29, ... 271
Chunya bin Sheraya, Bom. H. Ct., Nov. 27, 1875 203
Chutterdharee Sing, 5 W. R., 59 301
Chyton Bowra, 5 Leg. Rem., 49 67
Clerk *v.* Beane, 5 W. R., 53 424
Codd *v.* Cabe, 1 Ex. D., 852 75
Cole *v.* Manning, 2 Q. B. D., 611 454
Collector of Salem, 7 Mad. 233, ... 476
Corbyn, Panj. Rec., 1869, p. 51 261
Corporation of Calcutta *v.* Beekun Ram Napit, I. L. R., 2 Cal., 290 ... 482

D.

Dalapati Rao, 1 Mad., 83 66
Dalsukram Haribhai, 2 Bom., 410 ... ... 139, 410
Damoodar Biddiadhur Mahapatro, I. L. R., 7 Cal., 385, 8 Cal. L. R., 514 ... 147
Danee, 4 Panj. Rec., 72 119
Darba, I. L. R., 1 All., 461 64

PAGE
Dassoo Manjee, 11 W. R., 39. 175
Daulatia, I. L. R., 3 All., 305 F. B., ... 65
David, 6 Cal. L. R., 245 416
Daya Anand, Bom, H. Ct., March 12, 1874 357
Deela Mahtoon, 8 Cal. L. R., 72 268
Deva Doyal, 11 Bom., 237 490
Dewan Elahee Newaz Khan *v.* Suburuniussa, 5 W. R., 14 147
Dham Mundul, Cal. H. Ct., Feb. 25, 1880 294
Dhondu Ramchandra, 5 Bom., 100 *Cr. Ca.*, ... 264
Dhumoo Kazee, 10 Cal. L. R., 151—I. L. R., 8 Cal., 121 298
Dhurmo Dutt Ojha, 8 W. R., 18 ... ... 648, 651
Diaz, 3 Bom,, 51 *Cr. Ca.* 333
Dobree Halwarree, Cal. H. Ct., Feb. 20, 1873 330
Domun Kahar, 12 W. R , 82 ... ... 165, 650
Dowlut Singh, 6 Cal. L. R., 273 277
Dula Fakir, 6 Cal. L. R., 276 342
Dullalee Bewa, 3 B. L. R., 53 219
Durzoolla, 9 W. R., 83, ... 67, 231, 254
Dwarka Manjee, 9 Cal. L. R., 427 407
Dwarkanath Dutt, 7 W. R., 15 394
Dwarkanath Majoomdar, 2 W. R., 89 272

E.

Elahee Buksh, 5 W. R., 80, B. L. R. Sup. Vol. F. B. 326, 682
Elahi Buksh, I. L. R., 2 All., 910 414
Emp. *v.* Berrill, I. L. R., 4 All., 4 424
Debee Pershad, I. L. R., 6 Cal., 530 650
Dosaji Gholam Hosein, I. L. R., 3 Bom., 334 658
Dhan Kishen Dass, 2 Leg. Rem., 93 467
Dinonath Roy, 7 Cal. L. R., 190—I. L. R., 8 Cal., 166 506
Gayadin, I. L. R,, 1 Cal., 148 401
Juddonath Gangooly, I. L. R , 2 Cal., 273 401
Kudder Khan, I. L. R , 3 All , 573 F. B. 489
Maguire, I. L. R., 5 Cal., 124, 4 Cal L. R., 432 .. . 192
Mahaddi, 6 Cal. L. R., 349—I. L. R., 5 Cal., 871 ... 307, 406
Municipal Corpn. Calcutta, I. L. R., 3 Cal., 758 213
Najam, 2 Leg Rem., 270 297
Nobogopal Bose, I. L. R., 6 Cal., 491 482
Ramchunder Sidheshwar, Bom. H. Ct., Oct. 21, 1878 258
Vyapoory Moodilliar, 8 Cal. L. R., 197—I. L. R., 6 Cal., 655 ... 645
Eshan Chunder Dey, 21 W. R., 40 ... ... 242, 341

F.

Fanchanada Tambiran, 4 Mad., 229 448
Fata Adaji, 11 Bom., 247 655
Foster *v.* Green, 7 H. & N , 881 476
Foy, Tay & Bell, 219 425
Futteechand Vastichand, 5 Bom., 85 *Cr. Ca.* 298

G.

Gangadhur Sircar, 23 W. R., 14 459
Ganjoo Singh, 2 Cal L. R., 389 263
Ganni, All. H. Ct. 1875, p. 249 120

PAGE
Ganu bin Dharoji, 6 Bom., 57 *Cr. Ca.* 683
Geerjamonee, Suth. Rep., 1864, p. 2 149
Gendoo Khan, 7 W. R., 14 113
Gholam Durbesh, 10 W. R., 36 145
Gholam Ismail, I. L. R., 1 All., 1 427
Gholam Mohaddeen, Weir, Sup. 17 455
Gogon Chunder Bose, I. L. R., 6 Cal., 247 691
Gokul Bandari, 1 W. R., 8 232
Gokul Kahar, 25 W. R., 36 311
Golab Roy, 3 Agra, 156 265
Golap Danook, I. L. R., 7 Cal., 96—8 Cal. L. R., 471 284
Goluck Chunder, 13 W. R., 16 68
Goluck Chunder Roy, 17 W. R., 33 149
Gonda, 13 W. R., 19 454
Gonesh Koormee, 4 W. R., 1 355
Goodman *v.* Harvey, 4 Ad. & El., 870 476
Goolzar Khan, 9 W. R., 30 68
Gopal, 2 All., 430 262
Gopal Bhereewalla, 1 W. R., 21 402
Gopal Dass, I. L. R., Mad., 271 682
Gopal Hajjam, 13 W. R., 16 299
Gopeenath Sirdar, 1 Cal. L. R., 141 418
Gopi Mohun Moulick *v.* Taramoni Chowdhrain, 4 Cal. L. R., 309 ... 144
Gour Churn Dass, 11 W. R., 53 504
Gour Mohun Majee, 22 W. R., 81 148
Gour Mohun Singh, 16 W. R., 44 ... ... 209, 445
Govt. of Bengal *v.* Hira Lall Dass, 8 B. L. R., 422 511
Govt. of Bombay *v.* Shidapa, I. L. R., 5 Bom., 405 395
Govind Bapli Raul, 11 Bom., 278 ... ... 246, 654
Govind Chunder Moitro, I. L. R., 6 Cal., 835—8 Cal. L. R., 217 ... 149
Gowdapa bin Venkugowda, I. L. R., 2 Bom., 534 ... ... 228, 264
Greedharee Manjee, 7 W. R., 39 293
Grish Chunder Talookdar, I. L. R., 5 Cal., 614 ... 298, 685, 690
Gunowre Bhooya, 6 W. R., 70 67
Gunraj, 1 Leg. Rem., 211 654
Gurbad Bechan, 9 Bom., 344 355
Gurningapa, 7 Bom., 48 *Cr. Ca.* 260
Gyan Chunder Roy, I. L. R., 7 Cal., 208—8 Cal. L. R., 267 ... 209, 219, 445

H.

Hari Ghanu, I. L. R., 2 Bom., 526 310
Hari Mohun Mala, 1 B. L. R., 20 144
Hariram Birbhan, 11 Bom., 170 473
Harmanta Madhaji Khadki, I. L. R., 1 Bom., 610 ... 248, 325, 659, 679
Harvey *v.* Brice, 4 W. R., 26 148
Hastings, 9 Bom., 157 95
Heera Poonja, 1 Bom., 33 435
Hem Chunder Pal, 20 W. R., 70 510
Het Lall Roy, 22 W. R., 75 512
Hiralall Dass, 8 B. L. R., 422 F. B. 205
Hiramun Ayah, 21 W. R., 64—13 B. L. R., 4 App. 197, 487

PAGE
Hiran Mya, 1 Cal. L. R., 21 650
Hochan v. Elliot, 5 W. R., 4 136
Hood's case, 1 Mood. Cr. Ca., 281 95
Hosein Buksh, 6 Cal. L. R., 521 ... ... 231, 254, 331
Hossein Ali, 5 All., 50 68
Hurdut Surma, 8 W. R, 68 176
Huronath Rai, 2 W. R., 50 231
Huroo Manjee, 21 W. R., 4 310
Hurree Dutta, 18 W. R, 6 260
Hurree Narain Mookerjea, 2 Cal. L. R., 518 312
Hureehur Mozoomdar, 22 W. R., 355 666
Hurribole Chunder Ghose, I. L. R., 1 Cal., 207—25 W. R., 36 ... 650, 690
Hurro Chunder Pal, 20 W. R., 63, 76 ... ... 160, 418, 679
Hurro Shahu, 16 W. R., 20 298
Hurruck Narain Singh v. Luchmi Bara Roy, 5 Cal. L. R., 287 ... 148
Hursookh, 2 All., 479 285

I.

Imam Valad Bakan, 3 Bom., 57 683
Indrobee Shaha, 1 W. R., 5 ... ... 88, 172
Ishan Dutt, 6 B. L. R., 87 App.—15 W. R., 34 300
Ishwar Bhudar, 8 Bom., 124 Cr. Ca 456
Issur Chunder Jogee, Suth. Rep., 1874, p. 21 67
Issur Chunder Mundul, 25 W. R., 65 272

J.

Jaddo Mussulmani, 6 W. R., 60 454
Jaffir Ali, 19 W. R., 57 ... ... 327, 653, 678, 683
——— 20 W. R, 70 384
——— Cal. H. Ct., Feb. 27, 1877 485
Jaffir M. Talab, I. L. R., 5 Bom, 685 399
Jaggut Chunder Chuckerbutty, I. L. R., 2 Cal., 110 417
Jaikishen Girdhar, Bom. H. Ct. Oct. 2, 1873 729
Jamalvalad Nanabhai, Bom. H. Ct., Dec. 22, 1870 384
Jankee Nath Bhuttacharjee, 2 W. R., 36 135
Jetoo, 23 W. R., 16 168
Jhapoo, 20 W. R., 37 113
Jhuree, 7 W. R., 41 293
Joga Pershad, 3 Cal. L. R., 131 269
Jogun Polloi, 6 W. R., 49 67
Joheri Singh, 22 W. R., 28 277
Jora Hasji, 11 Bom., 242 652
Jowsheir Sirdar, 1 Cal. L. R., 62 676
Joy Govind Roy, Cal. H. Ct., July 26, 1877 148
Joy Hurree Kor, I L. R., 2 Cal, 356 436
Joy Kissen Mookerjea, 24 W. R., 40 152
Joy Krishto Ghosamee, 7 W. R., 22 307
Joy Mohun Chunder, 13 W. R., 19 68
Joyaddee Paramanick, 7 Cal. L. R., 61 296
Jugannath, I. L. R., 3 All., 258 488
Juggut Chunder Chuckerbutty, 1 Cal. L. R., 48 125
Juswunt Singh, 6 W. R., 18 119

PAGE

K.

Kadar Buksh, 4 Punj. Rec., 64 448
Kalachand, 7 W. R., 60 68
Kalachand Dass, I. L. R., 6 Cal. 14—11 W. R., 21 ... 118, 327, 683
Kali Churn Chumari, 10 Cal. L. R., 51—I. L R., 8 Cal, 156 163, 688
Kali Churn Gangooly, 7 W. R., 2, ... 394
Kali Krishto Thakur, 8 Cal. L. R., 245—I. L. R., 7 Cal., 46 150
Kali Prosunno Bagchee, 22 W. R., 39 ... ... 209, 444
Kali Sankar Sandyal, 3 B. L. R., 14, *Cr. Ca.* 68
Kallu, I. L. R., 3 All., 60 82
Kalu Patel, 11 Bom., 146 653
Kalubhai Meghabhai, 7 Bom., 85 *Cr. Ca.* 399
Kalya bin Fakir, 5 Bom., 84 *Cr. Ca.* 92
Kaminee Dossee, 12 W. R., 15 469
Kanai Sheikh, Suth. Rep, 1864, p. 38 350
Karan Singh, I. L. R., 1 All., 680 278
Karimdad, I. L. R., 6 Cal., 496 ... ... 209, 445
Karim Khan, 8 Cal. L. R., 300 162
Karoo, 6 W. R., 44 ... ... 326, 683
Karsandal Danatram, 5 Bom., 20, *Cr. Ca.* 92
Kasheenath Banerjea *v.* Kangalee Kassam Pribhai, 8 Bom. 95, *Cr. Ca.* ... 455
Kashi Chunder Dass, 19 W. R., 47 116
Kashi Kishore Roy *v.* Tarini Kant Lahory, 3 B. L. R., 76 148
Kassee Singh, 21 W. R., 61 493
Kesavaiya, Weir, 294 452
Keshav Lakshman, I. L R., 1 Bom., 175 261
Keshub Bhoonia, 25 W. R., 8 654
Khamir, I. L. R., 7 Cal., 662 413
Khan Mahomed, 24 W. R., 53 485
Khanderav Rajirav, I. L. R., 1 Bom., 10 311
Kheraj Mullah, 20 W. R, 13—11 B. L. R., 33 278
Khoodeeram, 8 W. R., 39 280
Khurruckdharee Singh, 22 W. R., 44 267
Khyardi Mundul, I. L. R., 4 Cal., 474 418
Kinoo Sondagor, 24 W. R., 72 456
Kishoree Mohun Roy, 19 W. R., 10 147
Kodai Kahar, 5 W. R., 6 ... ... 175, 230, 650
Koikot Noshyo, Cal. H. Ct., June 14, 1877 117
Kolundas Doss, 1 N. W. P., 100... 350
Kookur Singh, 1 Cal. L. R., 130 123
Koonj Behari Chowdhry, 15 W. R., 43 120
Kovilaghatha Rama Varma Raja, I. L. R., 3 Mad., 351 246
Krishna Mohun Bisack, 1 Cal. L. R., 58 144
Krishno Monee, 6 Cal. L. R., 289 168
Krishtendro Roy, 7 W. R., 30 115
Krishto Dhoba, 14 W. R., 16 ... ... 226, 331
Krishto Mundul, 7 W. R., 7 293
Krishto Soonder Deb, 2 W. R., 5 66
Kulum Mundul, 22 W. R., 82 683

PAGE

L.

Lacha Kalu, I. L. R., 1 Bom., 141 199
Lakhan Santal, Cal. H. Ct., March 26, 1874 658
Lalji Ukheda *v.* Jowba Dowba, 8 Bom., 94 App. C. Jur. 141
Lall Mahomed, 6 All., 284 266
Lalla Baneswar Sahai, Cal. H. Ct., Aug. 20, 1877 261
Lalla Chowbay, 1 N. W. P. 350
Lalla Gopeenath *v.* Musst. Jeetum Koer, 6 W. R., 57, *Civ. Ca.* 454
Lalla Karwar, 5 Bom., *Cr. Ca.*, 63 372
Leelanund Singh, 1 Cal. L. R., 273 151
Lopotee Demnee, 8 W. R, 67 454
Louis, 15 B. L. R., 14 App. 483
Love, 22 W. R., 336 *Civil* 505
Luchman Singh, I. L. R., 2 All., 308 232
Lukhinarain Agoori, 23 W. R., 61 253

M.

Madho Rao Cainta Pant Galai, 5 W. R., 33 P. C. 685
Mahomed Ali, 8 Bom. 5 *Cr. Ca.*, ... 731
Mahomed Eshak, I. L. R., 6 Cal., 477 69
Mahomed Homayoon Shah, 21 W. R., 72 F. B. 306
Mahomed Saib, I. L. R., 1 Mad., 277 64
Mahomed Yashin, I. L. R., 4 Bom., 101 405
Mahuddi, 6 Cal. L. R., 349 253
Makalingaiyan, 6 Mad., 191 213
Malapa bin Kanapa, 11 Bom., 196 ... ... 327, 683
Malcolm *v.* Gasper, I. L. R., 2 Cal., 278 482
Manik, 1 Leg. Rem., 216 254
Mary Donelly, I. L. R., 2 Cal., 405 ... ... 228, 264, 679
Mathoor Ramchunder, 7 Bom., 64 *Cr. Ca.* 213
Mathoora Nath Chuckerbutty, 17 W. R., 55—9 B. L. R., 354 335
Meahjan Sheikh, 20 W. R, 50 307
Meelan Khalifa, 1 W. R., 7 67
Meer Dhunnoo, 21 W. R., 25 154
Meiselback, 18 W. R., 49 454
Misser Sheikh, 14 W. R., 9 293
Mitchell, 1 Cal. L. R., 339—I. L. R., 3 Cal., 379 476
Miyagi Ahmed, I. L. R., 3 Bom., 150 210
Moba Singh, 3 All, 27 230
Mohan Lall, 1 Leg. Rem., 144—I. L. R., 4 All., 66 ... 209, 619
Mohesh Biswas, 19 W. R., 16 ... ... 327, 654
Mohesh Mistree, I. L R, 1 Cal, 282 ... ... 228, 264
Mohesh Mundul, 3 Cal. L. R., 404 504
Mohim Chunder Lall, I. L. R., 3 Cal., 763—4 Cal. L. R., 405 ... 402
Mohunt Dhanraj Giri Ghosami, 2 B. L. R., 27 149
Mohur Mundir, 8 Cal. L. R., 431 138
Mojan *alias* Nanee Khan, 20 W. R., 69... 657
Molla, Marshall, 407... 209
Mookta Singh, 13 W. R., 60—4 B. L. R., 14 ... 301, 511, 679
Mooruf Lall, 6 W. R, 93 504
Mootkee Kora, 2 W. R., 1 66

PAGE
Mothoor Chunder Das, 2 Cal L, R., 509 136
Moti Lall Sahoo *v.* Moti Lall Roy, 7 Cal. L. R, 433 135
Muddoosoodun Chuckerbutty, 23 W. R, 63 74
Muddoosoodun Ghose, 13 W. R, 39 260
Muddoosoodun Shah, 21 W. R., 55 149
Mulka, Panj. Rec., 1870, p. 36 455
Mulla, 1 Leg. Rem, 220 659
Mungroo, 8 All., 293 251
Municipal Commissioners Suburbs of Calcutta, 7 B. L. R., 499 ... 135
Murari, I. L. R., 4 All., 147 248
Muse Ali Adam, I. L. R, 2 Bom., 653 258
Mussahur Daood, 6 W. R., 92 67
Musst. Anundee Koer, *v.* Ranee Soonaet Koer 9 W. R, 64 148
Musst. Jamotee, 1 Cal. L. R, 89 456
Musst. Jema, 8 W R, 40 293
Musst. Jesmut, 6 W. R., 49 455
Musst. Jowahir, 6 Agra, 46 193
Musst. Ladu, 3 All., 70 455
Musst. Mina Naggerbhatun, 3 W. R., 6 313
Musst. Munglo, 2 All., 454 456
Musst. Somree, 22 W. R., 30 455
Muthoor Ghose, 11 W. R, 10 260
Muthoora Prasad Panday, 2 W. R., 10 394
Mutti Lal Ghose, I. L. R., 6 Cal, 308 444
Mutti Nushyo, Suth. Rep., 1864, p. 18 347
Mutti Ram Sahoo *v.* Mohi Lall Roy, 7 Cal. L. R., 443 141

N.

Nafa, 23 W. R., 24 ... ... 654, 678, 682
Napa bin Basapi, Bom. H. Ct., Nov. 23, 1871 115
Narayanasami Ayyar, 7 Mad., 183 213
Narayan Babaji, 9 Bom, 346 82
Narayan Krishna, 2 Bom., 416 67
Narayan Pendshe, 11 Bom., 102 ... ... 299, 459
Narayan Soobadhee, 6 W. R., 6 118
Narayan Soobhoodee, 22 W. R., 37 120
Narayan Sundar, 5 Bom., 1 *Cr. Ca.* 493
Natha Mula, 4 Bom., 37 *Cr. Ca.* 64
Nathu Manickchand, Bom. H. Ct., June 15, 1871 148
Nawab, I. L. R., 2 All, 835 118
Nawab Jan, 8 W. R 19 ... ... 327, 683
Nazam, 2 Leg. Rem., 170 678
Neamut Ali, 22 W. R, 365 661
Neelkanto Pundit, 13 B L. R., 18 App. 667
Niamutoolla, 14 W. R., 63 210
Nilambor Baboo, I. L. R, 2 All., 276 ... ... 416, 475
Nim Chand Mookerjee, 20 W. R., 70 438
Nobin Chunder Bonnerjea, 20 W. R., 70 438
Nobocoomar Banerjea, 14 W. R, 12—15 B. L. R., 45 485
Nobodeep Chunder Ghosomee, 1 B. L. R., 15 *Orig. Side Crim.* ... 165, 648
Nodur Chand Kamte, 23 W. R., 35 330

PAGE

Nomal, 4 B. L. R., 9 446
Noujan, 7 Mad., 375; Weir, 271 251
Nozumuddy, 21 W. R., 54 139
Nujjam Ali, 6 W. R., 41 445
Nur Bux Haji, I. L. R., 6 Cal., 279 ... ... 654, 690
Nur Mahomed, Panj. Rec., 1874, p. 12 652
Nuzee Nushyo, 15 W. R., 52 729
Nuzur Ali, 6 All., 39 68

O.

Obhaya Chowdry, 6 B. L. R., 148. App. 115
Okhor Ghose, 1 W. R., 50 307
Omed Ali, Cal. H. Ct., June 1, 1877 676
Omesh Chunder Bose, 5 W. R., 71 101
Oudh Behari Narain Singh, 1 Cal. L. R., 143 301

P.

Pagarea Shaha, 19 W. R., 51 651
Pal Doss, 10 W. R., 51 134
Pandarinath, I L. R., 6 Bom., 34 650
Pandu bin Vithoji, 4 Bom., 7 *Cr. Ca.* 448
Parbhudas, 11 Bom., 90 643
Parbuty Churn Bose, 3 Cal. L. R., 406 ... ... 126, 474
Parvati, 7 Bom., 82 *Cr. Ca.* 298
Pedda Swa Reddi, I. L. R., 3 Mad., 238... 124
Petambar Jana, I. L. R., 1 Bom., 61 ... ... 650, 691
Petambar Jugi, 25 W. R., 14 139
Phoolman Tewaree, 6 W. R., 51... 63
Pitti Singh, 8 W. R., 37 134
Piyaree Lall, 4 Cal L. R., 504 658
Pochem Chung, 2 W. R., 35 67
Poholee Mullick, 12 W. R., 28 140
Prithiram Chowdhry, 20 W. R., 51 150
Prosuno Coomar Moitro, 23 W. R., 56 233
Pryag Singh, 6 Cal. L. R., 206 149
Punjab Singh, I. L. R., 6 Cal., 579 277
Puran Kusam Narasaya Pantulu, 2 Mad., 396 ... ... 87, 172
Pursooram Burrooah, I. L. R., 2 Cal., 117 69
Pursoram, 7 W. R., 42 440

Q.

Quiros, 6 Cal. L. R., 465—I. L. R., 6 Cal., 83 425

R.

Radanath Majoomdar, 5 Wyman, 19 445
Raghubar, I. L. R., 2 All., 351 113
Rai Luchmeeput Singh, 14 W. R., 17 144
Rai Mohun Rai *v.* J. Wise, 16 W. R., 24 149
Raj Coomar Bose, 10 B L. R., 36 App. 12 W. R., 41 ... 304, 341
Raj Coomar Singh, 1 Cal. L. R., 382 416
——————— 2 Cal. L. R., 62 233
Raj Krishna Mitter, 1 B. L R., 37 *Cr. Ca.* 350

PAGE
Raja Koomed Narain Bhoop v. Mohim Chunder, 3 Cal. L. R., 551—I. L. R., 4 Cal, 650 ... 148
Raja Run Bahadoor Singh, 22 W. R., 79 ... 114
Raja Statyanund Ghosal, 21 W. R 48 ... 188
Ram Chunder Chatterjee, 25 W. R., 19 ... 272
Ram Chunder Eknath, 6 Bom. 36 *Cr. Ca.* ... 145
Ram Chunder Geer Ghosein, 6 W. R., 40 ... 145
Ram Chunder Laha, 1 Cal. L. R., 134 ... 126, 474
Ram Churn Chamar, 4 W. R., 10 ... 228
Ram Churn Ghose, 20 W. R., 33... 310
Ram Churn Kairee, 6 W. R, 39 ... 67
Ram Kishen Acharjee Chowdhry, 21 W. R., 6 ... 115
Ram Kishen Halwai, 25 W. R., 48 ... 267
Ram Manickyo Chuckerbutty, 1 Cal L. R., 478 ... 248
Ram Prosad Hajaree, 5 W. R., 24 *Mis. Ca.* ... 210
Ram Raujan Bhandari, 25 W. R., 33 ... 445
Ram Sooder Debee, 1 Cal. L. R. 86 ... 151
Ram Tahal Singh, 5 W. R. 65 ... 340
Rama Bhisgoda, I. L. R. Bom. 223 ... 65
Rama Birapa, I. L. R., 3 Bom. 12 ... 651
Ramasami Padayachi, I. L. R., 1 Mad., 394 ... 326, 678
Ramchand, I. L. R., 1 All., 664 ... 654
Raminihi Nayar, I. L. R., Mad., 266 ... 74
Ramrunginee Dassee, 18 W. R., 36 ... 149
Rana Reddi, I. L. R., 3. Mad, 48 ... 658
Rance Anandamoyee Dabee, 2 Cal. L. R., 264 ... 148
Raneegunge Coal Asson. Ld. v. Heralall Ghosamee, 24 W. R., 7 ... 149
Reg. v. Adivigada, I. L R, 1 Mad., 171 ... 194
" Ameer Khan, 15 W. R., 59—17 B. L. R., 240 ... 484
" Amutee Govinda, 10 Bom., 497 ... 691
" Beriman, 6 Cox. C. C., 388 ... 165, 648
" Cheverton, 2 F. & F., 833 ... 165, 648
" Frost, 9 C. & P., 129 ... 212
" Hardewa, N. W. P., 1873, p. 217 ... 296
" Heenan, Cal. H. Ct., Sep. 6, 1877 ... 421
" Hicks, 10 B L. R., 1 App. ... 649
" Kashinath Dinkar, 8 Bom., 126... 460
" Macdonald, 10 B. L. R., 2 App. ... 642, 650
" Macgregor, Cal. H. Ct., Sept. 6, 1877 ... 421
" McNaughten, Arch. 15 ... 438
" Mahomed Hosein, 16 W. R., 37 ... 209
" Malony, 1 Mad., 193 ... 197
" Mehra Singh, 4 B. L. R., 15 ... 204
" Mick, 3 F. & F., 342 ... 166, 648
" Mookta Singh, 4 W. R., 15—13 W. R., 601 ... 511
" Navroji Dadabhai, 9 Bom., 358 ... 167, 649, 691
" Nathalal Pitambar, 10 Bom., 102 ... 482, 492
" Petitt, 4 Cox C. C., 164 ... 165, 648
" Sakhya Govund, I L. R., 1 Bom., 50 ... 194
" Stubbs, 2 Law J. *Mag. Ca.*, 16 ... 683
" Thursfield, 8 C. & P., 269 ... 460

PAGE

Reg. v. Upendranath Dass, I. L. R., 1 Cal., 356 482
" Vithaldar Pranjivandar, I. L. R., Bom., 462 288
" Warningham, 2 Den. C. C., 447n 167, 649
Reza Hosein, 8 W. R., 55 356
Rhedoy Nath Biswas, 2 W. R., 45 103
Rocha Dosadh, 6 Cal. L. R., 219—I. L. R., 5 Cal, 768 663
Rooke v. Pearee Lall Coal Co., 11 W. R., 434 135
Roopchand Paroeee, Cal. H. Ct, July 25, 1877 144
Roy Omesh Chunder Sen, 21 W. R., 67 ... ... 135, 153
Rubbeeoollah, 7 W. R., 13 67
Rughoo Parirah, 19 W. R., 28—10 B. L., 26 App. 219
Rugooa, 6 W. R., 3 435
Rungatooneee, 22 W. R., 52 417
Rungeet Sonthal, 6 W. R., 73 293
Rupa Goalla, 15 W. R., 42 284
Rupon Rai, 6 B. L. R., 296 261
Russick Lall Mullick, 7 Cal. L. R., 382 ... ... 209, 445
Rutton Dass, 16 W. R., 19 298

S.

Sabha Aaitala, I. L. R., 1 Mad., 304 395
Sadhu Mundul, 21 W. R., 69 ... . 305, 654, 678, 682
Sahae Rai, 2 Cal. L. R., 304—I. L. R., 3 Cal., 623 310
Sahree, 8 W. R., 31 67
Sakharam Makundji, 1 Bom., 166 960
Salamut Ali, 23 W. R, 59 253
Salik Roy, I. L. R., 6 Cal., 582 ... ... 209, 445
Samiruddeen, 10 Cal. L. R., 11 ... ... 469, 659
Sangapa Sankrapa, Bom. H. Ct., May 21, 1873... 263
Sarkya Valad Dhaku, 5 Bom. 31 *Cr. Ca.* 173
Sarya bin Krishna Mandakar, 3 Bom. 37 *Cr. Ca.* 729
Sattya Nandi Appa, Bom. H. Ct., Aug. 9, 1869 286
Seaman v. Netherclift, 2 C. P. D., 53 682
Seeni Nyna Mohidee, Weir, Sup. p. 17 144
Seetaram Sahoo, 18 W. R., 35 149
Sewa Bhogta, 23 W. R., 12 635
Sewarut Jewari, Cal H. Ct., Ap. 5, 1879 150
Shakhawat Sheikh, 2 W. R., 13 307
Sham Kishore Haldar, 13 W. R., 36 299
Shama Bagdee, 20 W. R, 74 310
Shama Kant Bandopadhya, 14 W. R., 69 138
Shama Sunkar Biswas, 1 B. L. R., 16—10 W. R., 25 332
Shankar Araji Hoshing, 6 Bom., 69 *Cr. Ca.* 484
Sheikh Boodhoo, 8 W. R., 38 293
Sheikh Dadabhai, 1 Bom., 16 403
Sheikh Erad Ali, 4 Cal. L. R., 534 220
Sheikh Himayat, Cal. H. Ct., July 29, 1862 119
Sheikh Kyamut, Suth. Rep., 1864, p. 1 350
Sheikh Mehr Chand, 13 W. R., 63 293
Sheikh Moneeroodeen, 18 W. R., 28 454
Sheikh Moostafa, 1 W. R., 1 438

PAGE
Sheikh Muddon Ali, 1 W. R., 27 67
Sheo Churn Lall, 3 Cal. L. R., 80 116
Sheo Dyal Singh, 6 W. R. 79 104
Sheo Prosunno Ghosal, 6 W. R., 88 ... ... 87, 172
Sheo Suru Singh, Cal. H. Ct., Aug. 16, 1877 ... ... 406, 417
Shera, 2 Panj. Rec., 72 ... ... 87, 172
Shonai Paramanick, 1 Cal. L. R., 486 138
Shonaollah, 5 W. R., 44 66
Shunder Bhim, Bom. H. Ct., Sept. 17, 1869 117
Shurat Chunder Banerjea v. Bama Churn Mukerjea, 4 Cal. L. R., 410 ... 144
Shushi Bhushan Chuckerbutty, I L. R., 4 Cal., 623 74
Sibdas v. Neelkanto Bhaishianee, I. L. R., 4 Cal., 374 456
Sobha, 1 Leg. Rem , 103 452
Sofiruddeen, 2 Cal. L. R., 132 ... ... 293, 649
Sonai Sirdar, 25 W. R., 45 148
Soojan Beebee, 21 W R , 414 658
Sookhun Sahoo, 18 W. R., 5 480
Soorjaat, 10 B. L. R., 332 652
Soorajoodeen, Panj. Rec. 1864, p. 64 ... ... 729, 731
Sreekant Ghosal, 10 W. R., 43—2 B. L. R., 28 F. B. 284
Sreemotee Mongola, 6 W. R , 81... 293
Sreemunt Ram Totadar, 22 W. R., 387... 635
Sabad Dhemnee, 20 W. R., 58 456
Subhana Gandan, 1 Mad., 30 ... ... 156, 209, 445
Suffurooddeen, 2 Cal. L. R. 263—I. L. R. 3 Cal., 754 51
Sukh Lall, Bom. H. Ct. Sept. 17, 1869 135
Sunker Gope, I. L R., 6 Cal., 307 194
Sunt Belas Singh, Cal. H. Ct., March 29, 1879... 120
Surjee Narain Das, I. L. R., 6 Cal., 88 144
Sustiram Mundul, 21 W. R., 1 307
Sutherland v. Crowdy, 18 W. R., 11—9 B. L. R., 229... 147

T.

Tarinee Kant Lahory, 8 W. R., 79 115
Tarucknath Mookerjee, 10 B. L. R., 285 413
Thakoor Dyal Sen, 17 W. R., 57 267
Thaku bin Ira, 5 Bom., 81 *Cr. Ca.* 454
Thompson, 6 All., 205 455
Tillukdharee, 2 Cal. L. R., 1 312
Titoo Mya, 1 Cal. L. R., F. B. 356
Todd, 5 All., 237 454
Tonao Koch, 2 W. R , 63 67
Tookhanund, 6 Agra, 115 445
Tookhun Mahato, Cal. H. Ct,, July 24, 1877 676
Toonooram Malee, 3 W. R., 44 66
Totee Beebee v. Abdool Khan, 5 Cal. L. R., 458—I. L. R., 5 Cal., 530 ... 456
Troylokhyonath Bose, 5 W. R., 58 ... ... 135, 153
Troylokhyonath Sircar, 2 W. R., 64 153

PAGE

U.

Udai Patnaik, 4 B. L. R., 5—12 W. R., 68 729
Udoy Chang, 20 W. R., 73 307
Ujalmoni Dassee *v.* Chunder Koomar Neogi, 12 W. R., 18 F. B.—4 B. L. R., 24 F. B. 140
Uma Churn Shantra, 7 Cal. L. R., 352 147
Umbica Prashad, 1 Cal. L. R., 268 118
Umda Khanum, 3 Cal. L. R., 72 114
Unnopoorna Dossee, 21 W. R., 148 647
Uttam Chand Kapurchand, 11 Bom., 120 163
Uttam Chunder Chatterjea, 13 W. R., 72—5 B. L. R., 131 145

V.

Vahela Jetha, 7 Bom., 56 *Cr. Ca.* 168
Vaimbillee I. L. R., 5 Cal., 826 284
Venyak Divakar, 5 Bom. 32 *Cr. Ca.* 213
Vilaetee Khanum *v.* Meher Ali, 24 W. R., 4 485
Vivabundra Gand, 1 Mad., 199 330
Vyankatra Srinibas, 7 Bom., 59 *Cr. Ca.* 356

W.

Wahid Ali, 3 W. R., 42 394
Wazir Mundul, 25 W. R., 25 311

Y.

Yalla Vallad Parshia, 3 Bom. 37 *Cr. Ca.* 729

THE CODE OF CRIMINAL PROCEDURE,

BEING

Act No. X of 1882.

TABLE OF CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

CHAPTER I.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. Repeal of enactments.
   Notifications, &c., under repealed Acts.
3. Reference to Code of Criminal Procedure and other repealed enactments.
   Expressions in former Acts.
4. Interpretation-clause.
   Words referring to acts.
   Words to have same meaning as in Penal Code.
5. Trial of offences under Penal Code.
   Trial of offences against other laws.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICERS.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

SECTION.

6. Classes of Criminal Courts.

B.—Territorial Divisions.

SECTIONS.

7. Sessions Divisions.
   Districts.
   Power to alter Divisions and Districts.
   Existing Divisions and Districts maintained till altered.
   Presidency-towns to be deemed Districts.
8. Power to divide Districts into Sub-divisions.
   Existing Sub-divisions maintained.

C.—Courts and Offices outside the Presidency-towns.

SECTIONS.

9. Court of Session.
10. District Magistrate.
11. Officers temporarily succeeding to vacancies in office of District Magistrate.
12. Subordinate Magistrates.
    Local limits of their jurisdiction.
13. Power to put Magistrate in charge of Sub-division.
    Delegation of powers to District Magistrate.
14. Special Magistrates.
15. Benches of Magistrates.
    Powers exercisable by Bench in absence of special direction.

SECTIONS.
16. Power to frame rules for guidance of Benches.
17. Subordination of Magistrates and Benches to District Magistrate;
to Sub-divisional Magistrate.
Subordination of Assistant Sessions Judges to Sessions Judge.

D.—Courts of Presidency Magistrates.

SECTIONS.
18. Appointment of Presidency Magistrates.
19. Local limits of their jurisdiction.
20. Bombay Court of Petty Sessions.
21. Chief Magistrate.

E.—Justices of the Peace.

SECTIONS.
22. Justices of the Peace for the Mufassal.
23. Justices of the Peace for the Presidency-towns.
24. Present Justices of the Peace.
25. *Ex officio* Justices of the Peace.

F.—Suspension and Removal.

SECTIONS.
26. Suspension and removal of Judges and Magistrates.
27. Suspension and removal of Justices of the Peace.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

SECTIONS.
28. Offences under Penal Code.
29. Offences under other laws.
30. Offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

SECTIONS.
31. Sentences which High Courts and Sessions Judges may pass.
32. Sentences which Magistrates may pass.
33. Power of Magistrates to sentence to imprisonment in default of fine.
Proviso as to certain cases.
34. Higher powers of certain District Magistrates.
35. Sentence in cases of conviction of several offences at one trial.
Maximum term of punishment.

C.—Ordinary and Additional Powers.

SECTIONS.
36. Ordinary powers of Magistrates.
37. Additional powers conferrible on Magistrates.
38. Control of District Magistrates' investing power.

D.—Conferment, Continuance and Cancellation of Powers.

SECTIONS.
39. Mode of conferring powers.
40. Continuance of powers of officers transferred.
41. Powers may be cancelled.

PART III.
GENERAL PROVISIONS.

CHAPTER V.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

SECTIONS.
42. Public when to assist Magistrates and police.
43. Aid to person other than Police-officer, executing warrant.
44. Public to give information of certain offences.
45. Village headmen, landholders and others bound to report certain matters.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

SECTIONS.

46. Arrest how made.
Resisting endeavour to arrest.
47. Search of place entered by person sought to be arrested.
48. Procedure where ingress not obtainable.
Breaking open zanána.
49. Power to break open doors and windows for purposes of liberation.
50. No unnecessary restraint.
51. Search of arrested persons.
52. Mode of searching women.
53. Power to seize offensive weapons.

B.—Arrest without Warrant.

SECTIONS.

54. When police may arrest without warrant.
55. Arrest of vagabonds, habitual robbers, &c.
56. Procedure when Police-officer deputes subordinate to arrest without warrant.
57. Refusal to give name and residence.
58. Pursuit of offenders into other jurisdictions.
59. Arrest by private persons.
Procedure on such arrest.
60. Person arrested to be taken before Magistrate or officer in charge of Police-station.
61. Person arrested not to be detained more than twenty-four hours.
62. Police to report apprehensions.
63. Discharge of person apprehended.
64. Offence committed in Magistrate's presence.
65. Arrest by or in presence of Magistrate.
66. Power, on escape, to pursue and retake.
67. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

SECTIONS.
68. Form of summons.
Summons by whom served.
69. Summons how served.
Signature of receipt for summons.
70. Service when person summoned cannot be found.
71. Procedure when receipt cannot be obtained.
72. Service on servant of Government or of Railway Company.
73. Service of summons outside local limits.
74. Proof of service in such cases, and when serving officer not present.

B.—Warrant of Arrest.

SECTIONS.
75. Form of warrant of arrest.
Continuance of warrant of arrest.
76. Court may direct security to be taken.
Recognizance to be forwarded.
77. Warrants to whom directed.
Warrant to several persons.
78. Warrant may be directed to landholders, &c.
79. Warrant directed to Police-officer.
80. Notification of substance of warrant.
81. Person arrested to be brought before Court without delay.
82. Where warrant may be executed.
83. Warrant forwarded to Magistrate for execution outside jurisdiction.
84. Warrant directed to Police-officer for execution outside jurisdiction.
85. Procedure on arrest of person against whom warrant issued.
86. Procedure by Magistrate before whom person arrested is brought.

C.—Proclamation and Attachment.

SECTIONS.
87. Proclamation for person absconding.
88. Attachment of property of person absconding.
89. Restoration of attached property.

D.—Other rules regarding Poocesses.

SECTIONS.
90. Issue of warrant in lieu of, or in addition, to summons.
91. Power to take bond for appearance.
92. Arrest on breach of bond for appearance.
93. Provisions in this chapter generally applicable to summonses and warrants of arrest.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

SECTIONS.
94. Summons to produce document or other thing.
95. Procedure as to letters and telegrams.

B.—Search-warrants.

SECTIONS.
96. When search-warrant may be issued.
97. Power to restrict warrant.
98. Search of house suspected to contain stolen property, forged documents, &c.
99. Disposal of things found in search beyond jurisdiction.

C.—Discovery of Persons wrongfully confined.

SECTION.
100. Search for persons wrongfully confined.

D.—General Provisions relating to searches.

SECTIONS.
101. Direction, &c., of search-warrants.
102. Persons in charge of closed place to allow search.
103. Search to be made in presence of witnesses. Occupant of place searched may attend.

E.—Miscellaneous.

SECTIONS.
104. Power to impound document, &c., produced.
105. Magistrate may direct search in his presence.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

SECTION.
106. Security for keeping the peace on conviction.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

SECTIONS.
107. Security for keeping the peace in other cases.
108. Procedure of Magistrate, &c., not empowered to act under section 107.
109. Security for good behaviour from vagrants and suspected persons.
110. Security for good behaviour from habitual offenders.
111. Proviso as to European vagrants.
112. Order to be made.
113. Procedure in respect of person present in Court.

SECTIONS.
114. Summons or warrant in case of person not so present.
115. Copy of order section 112 to accompany summons or warrant.
116. Power to dispense with personal attendance.
117. Inquiry as to truth of information.
118. Order to give security.
119. Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

SECTIONS.
120. Commencement of period for which security is required.
121. Contents of bond.
122. Power to reject sureties.
123. Imprisonment in default of security.
Proceedings when to be laid before High Court or Court of Session.
Kind of imprisonment.
124. Power to release persons imprisoned for failing to give security.
125. Power of District Magistrate to cancel any bond for keeping the Peace.
126. Discharge of sureties.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

SECTIONS.
127. Assembly to disperse on command of Magistrate or Police-officer.
128. Use of civil force to disperse.
129. Use of military force.
130. Duty of officer commanding troops required by Magistrate to disperse assembly.
131. Power of Commissioned Military officers to disperse assembly.
132. Protection against prosecution for acts done under this chapter.

CHAPTER X.

Public Nuisances.

Sections.
133. Conditional order for removal of nuisance.
134. Service or notification of order.
135. Person to whom order is addressed to obey or show cause or claim jury.
136. Consequence of his failing to do so.
137. Procedure where he appears to show cause.
138. Procedure where he claims jury.
139. Procedure where jury finds Magistrate's order to be reasonable.
140. Procedure on order being made absolute. Consequences of disobedience to order.
141. Procedure on failure to appoint jury or omission to return verdict.
142. Injunction pending inquiry.
143. Magistrate may prohibit repetition or continuance of public nuisances.

CHAPTER XI.

Temporary Orders in Urgent Cases.

Section.
144. Power to issue order absolute at once in urgent cases of nuisance.

CHAPTER XII.

Disputes as to Immoveable Property.

Sections.
145. Procedure where dispute concerning land, &c. is likely to cause breach of peace.
Inquiry as to possession.
Party in possession to retain possession until legally evicted.

SECTIONS.
146. Power to attach subject of dispute.
147. Disputes concerning easements, &c.
148. Local inquiry.
Order as to costs.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

SECTIONS.
149. Police to prevent cognizable offences.
150. Information of design to commit such offences.
151. Arrest to prevent such offences.
152. Prevention of injury to public property.
153. Inspection of weights and measures.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

SECTIONS.
154. Information in cognizable cases.
155. Information in non-cognizable cases.
Investigation into non-cognizable cases.
156. Investigation into cognizable cases.
157. Procedure where cognizable offence suspected.
(*a*) Where local investigation dispensed with.
(*b*) Where Police-officer in charge sees no sufficient ground for investigation.
158. Reports under section 157 how submitted.

SECTIONS.

159. Power to hold investigation or preliminary inquiry.
160. Police-officer's power to require attendance of witnesses.
161. Examination of witnesses by police.
162. Statements to police not to be signed or admitted in evidence.
163. No inducement to be offered.
164. Power to record statements and confessions.
165. Search by Police-officer.
166. When officer in charge of Police-station may require another to issue search-warrant.
167. Procedure when investigation cannot be completed in twenty-four hours.
168. Report of investigation by subordinate Police-officer.
169. Release of accused when evidence deficient.
170. Case to be sent to Magistrate when evidence is sufficient.
171. Complainants and witnesses not to be required to accompany Police-officer.
Complainants and witnesses not to be subject to restraint.
Recusant complainant or witness may be forwarded in custody.
172. Diary of proceedings in investigation.
173. Report of Police-officer.
174. Police to inquire and report on suicide, &c.
175. Power to summon persons.
176. Inquiry by Magistrate into cause of death.
Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

SECTIONS.

177. Ordinary place of inquiry and trial.
178. Power to order cases to be tried in different Sessions divisions.
179. Accused triable in district where act is done, or where consequence ensues.
180. Place of trial where act is offence by reason of relation to other offence.
181. Being a thug or belonging to a gang of dacoits, escape from custody, &c.
Criminal misappropriation and criminal breach of trust.
Stealing.
182. Place of inquiry or trial where scene of offence is uncertain,
or not in one district only,
or where offence is continuing,
or consists of several acts.
183. Offence committed on a journey.
184. Offences against Railway, Telegraph, Post-Office and Arms Act.
185. High Court to decide, in case of doubt, district where inquiry or trial shall take place.
186. Power to issue summons or warrant for offence committed beyond local jurisdiction.
Magistrate's procedure on arrest.
187. Procedure where warrant issued by Subordinate Magistrate.

SECTIONS.
188. Liability of British subjects for offences committed out of British India.
Political Agent to certify fitness of inquiry into charge.
189. Power to direct copies of depositions and exhibits to be received in evidence.
190. "Political Agent" defined.

B.—Conditions requisite for Initiation of Proceedings.

SECTIONS.
191. Cognizance of offences by Magistrates.
192. Transfer of cases by Magistrates.
193. Cognizance of offences by Courts of Session.
Cases to be tried by Additional and Joint Sessions Judges;
by Assistant Sessions Judges.
194. Cognizance of offences by High Court.
195. Prosecution for contempts of lawful authority of public servants.
Prosecution for certain offences against public justice.
Prosecution for certain offences relating to documents given in evidence.
Nature of sanction necessary.
196. Prosecution for offences against the State.
197. Prosecution of Judges and public servants.
Power of Government as to prosecution.
198. Prosecution for breach of contract, defamation and offences against marriage.
199. Prosecution for adultery or enticing a married woman.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

SECTIONS.
200. Examination of complainant.
201. Procedure by Magistrate not competent to take cognizance of the case.
202. Postponement of issue of process.
203. Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Sections.
204. Issue of process.
205. Magistrate may dispense with personal attendance of accused.

CHAPTER XVIII.

Of Inquiry into Cases triable by the Court of Session or High Court.

Sections.
206. Power to commit for trial.
207. Procedure in inquiries preparatory to commitment.
208. Taking of evidence produced.
Process for production of further evidence.
209. When accused person to be discharged.
210. When charge is to be framed.
Charge to be explained, and copy furnished, to accused.
211. List of witnesses for defence on trial.
Further list.
212. Power of Magistrate to examine such witnesses.
213. Order of commitment.
214. Person charged outside Presidency-towns jointly with European British subject.
215. Quashing commitments under section 213 or 214.
216. Summons to witnesses for defence when accused is committed.
Refusal to summon unnecessary witness unless deposit made.
217. Bond of complainants and witnesses.
Detention in custody in case of refusal to attend or to execute bond.

SECTIONS.
218. Commitment when to be notified.
Charge, &c., to be forwarded to High Court or Court of Session.
English translation to be forwarded to High Court.
219. Power to summon supplementary witnesses.
220. Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

SECTIONS.
221. Charge to state offence.
Specific name of offence sufficient description.
How stated where offence has no specific name.
What implied in charge.
Language of charge.
Previous conviction when to be set out.
222. Particulars as to time, place and person.
223. When manner of committing offence must be stated.
224. Words in charge taken in sense of law under which offence is punishable.
225. Effect of errors.
226. Procedure on commitment without charge or with imperfect charge.
227. Court may alter charge.
228. When trial may proceed immediately after alteration.
229. When new trial may be directed, or trial suspended.
230. Stay of proceedings if prosecution of offence in altered charge require previous sanction.
231. Recall of witnesses when charge altered.
232. Effect of material error.

Joinder of Charges.

SECTIONS.
233. Separate charges for distinct offences.
234. Three offences of same kind within year may be charged together.
235. I. Trial for more than one offence.
II. Offence falling within two definitions.
III. Acts constituting one offence, but constituting when combined, a different offence.
236. Where it is doubtful what offence has been committed.
237. When a person is charged with one offence, he can be convicted of another.
238. When offence proved included in offence charged.
239. What persons may be charged jointly.
240. Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

SECTIONS.
241. Procedure in summons-cases.
242. Substance of accusation to be stated.
243. Conviction on admission of truth of accusation.
244. Procedure when no such admission is made.
245. Acquittal.
Sentence.
246. Finding not limited by complaint or summons.
247. Non-appearance of complainant.
248. Withdrawal of complaint.
249. Power to stop proceedings when no complainant.
250. Frivolous or vexatious complaints.
Recovery of compensation.

CHAPTER XXI.

Of the Trial of Warrant-cases by Magistrates.

Sections.
251. Procedure in warrant-cases.
252. Evidence for prosecution.
253. Discharge of accused.
254. Charge to be framed when offence appears proved.
255. Plea.
256. Defence.
257. Process for compelling production of evidence at instance of accused.
258. Acquittal.
Conviction.
259. Absence of complainant.

CHAPTER XXII.

Of Summary Trials.

Sections.
260. Power to try summarily.
261. Power to invest Bench of Magistrates invested with less power.
262. Procedure for summons and warrant-cases applicable.
Limit of imprisonment.
263. Record in cases where there is no appeal.
264. Record in appealable cases.
265. Language of record and judgment.
Bench may be authorized to employ clerk.

CHAPTER XXIII.

Of Trials before High Courts and Courts of Sessions.

A.—Preliminary.

Sections.
266. "High Court" defined.
267. Trials before High Court to be by jury.

SECTIONS.
268. Trials before Court of Session to be by jury or with assessors.
269. Local Government may order trials before Court of Session to be by jury.
270. Trial before Court of Session to be conducted by Public Prosecutor.

B.—Commencement of Proceedings.

SECTIONS.
271. Commencement of trial.
Plea of guilty.
272. Refusal to plead or claim to be tried.
Trial by same jury or assessors of several offenders in succession.
273. Entry on unsustainable charge.
Effect of entry.

C.—Choosing a Jury.

SECTIONS.
274. Number of jury.
275. Jury for trial of persons not Europeans or Americans before Court of Session.
276. Jurors to be chosen by lot.
Proviso.
Existing practice maintained.
Persons not summoned when eligible.
Trials before special jurors.
277. Names of jurors to be called.
Objection to jurors.
Objection without grounds stated.
278. Grounds of objection.
279. Decision of objection.
Supply of place of juror against whom objection allowed.
280. Foreman of jury.
281. Swearing of jurors.
282. Procedure when juror ceases to attend, &c.
283. Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

SECTIONS.
284. Assessors how chosen.
285. Procedure when assessor is unable to attend.

E.—Trial to Close of Cases for Prosecution and Defence.

SECTIONS.

286. Opening case for prosecution.
Examination of witnesses.
287. Examination of accused before Magistrate to be evidence.
288. Evidence given at preliminary inquiry admissible.
289. Procedure after examination of witnesses for prosecution.
290. Defence.
291. Right of accused as to examination and summoning of witnesses.
292. Prosecutor's right of reply.
293. View by jury or assessors.
294. When juror or assessor may be examined.
295. Jury or assessors to attend at adjourned sitting.
296. Locking-up-jury.

F.—Conclusion of Trial in Cases tried by Jury.

SECTIONS.

297. Charge to jury.
298. Duty of Judge.
299. Duty of jury.
300. Retirement to consider.
301. Delivery of verdict.
302. Procedure where jury differ.
303. Verdict to be given on each charge.
Judge may question jury.
Questions and answers to be recorded.
304. Amending verdict.
305. Verdict in High Court when to prevail.
Discharge of jury in other cases.
306. Verdict in Court of Session when to prevail.
307. Procedure where Sessions Judge disagrees with verdict.

G.—Re-trial of Accused after Discharge of Jury.

SECTION.

308. Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

SECTION.
309. Delivery of opinions of assessors.
Judgment.

I.—Procedure in Case of previous Conviction.

SECTION.
310. Procedure in case of previous conviction.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

SECTIONS.
311. Jurors' book.
Exemption of special jurors.
312. Number of special jurors.
313. Lists of common and special jurors.
Discretion of officer preparing lists.
314. Publication of lists, preliminary and revised.
315. Number of jurors to be summoned in Presidency-town.
Supplementary summons.
316. Summoning jurors outside the Presidency-towns.
317. Military jurors.
318. Failure of jurors to attend.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

SECTIONS.
319. Liability to serve as jurors or assessors.
320. Exemptions.
321. List of jurors and assessors.
322. Publication of list.
323. Objections to list.
324. Revision of list.
325. Annual revision of list.
326. District Magistrate to summon jurors and assessors.
327. Power to summon another set of jurors or assessors.
328. Form and service of summons.
329. When Government or railway servant may be excused.

SECTIONS.
330. Court may excuse attendance of juror or assessor.
331. List of jurors and assessors attending.
332. Penalty for non-attendance of juror or assessor.

L.—Special Provisions for High Courts.

333. Power of Advocate General to stay prosecution.
334. Time of holding sittings.
335. Place of holding sittings.
Notice of sittings.
336. Place of trial of European British subjects.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

SECTIONS.
337. Tender of pardon to accomplice.
338. Power to direct tender of pardon.
339. Commitment of person to whom pardon has been tendered.
340. Right of accused to be defended.
341. Procedure where accused does not understand proceedings.
342. Power to examine the accused.
343. No influence to be used to induce disclosures.
344. Power to postpone or adjourn proceedings.
Remand.
Reasonable cause for remand.
345. Compounding offences.
346. Procedure of Provincial Magistrate in cases which he cannot dispose of.
347. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.
348. Trial of persons previously convicted of offences against coinage, stamp-law or property.
349. Procedure when Magistrate cannot pass sentence sufficiently severe.

SECTIONS.
350. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.
351. Detention of offenders attending Court.
352. Courts to be open.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

SECTIONS.
353. Evidence to be taken in presence of accused.
354. Manner of recording evidence outside Presidency-towns.
355. Record in summons-cases, and in trials of certain offences by first and second class Magistrates.
356. Record in other cases outside Presidency-towns.
Evidence given in English.
Memorandum when evidence not taken down by the Magistrate or Judge himself.
357. Language of record of evidence.
358. Option to Magistrate in cases under section 355.
359. Mode of recording evidence under section 356 or section 357.
360. Procedure in regard to such evidence when completed.
361. Interpretation of evidence to accused or his pleader.
362. Record of evidence in Presidency Magistrates' Courts.
363. Remarks respecting demeanour of witness.
364. Examination of accused how recorded.
365. Record of evidence in High Court.

CHAPTER XXVI.

Of the Judgment.

Sections.
366. Mode of delivering judgment.
367. Language of judgment.
Contents of judgment.
Judgment in alternative.
368. Sentence of death.
Sentence of transportation.
369. Court not to alter judgment.
370. Presidency Magistrate's judgment.
371. Judgment to be explained and copy given to accused.
Case of person sentenced to death.
372. Judgment when to be translated.
373. Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVII.

Of the Submission of Sentences for Confirmation.

Sections.
374. Sentence of death to be submitted by Court of Session.
375. Power to direct further inquiry to be made or additional evidence to be taken.
376. Power of High Court to confirm sentence or annual conviction.
377. Confirmation or new sentence to be signed by two Judges.
378. Procedure in case of difference of opinion.
379. Procedure in cases submitted to High Court for confirmation.
380. Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

CHAPTER XXVIII.

OF EXECUTION.

SECTIONS.
381. Execution of order passed under section 376.
382. Postponement of capital sentence on pregnant woman.
383. Execution of sentences of transportation or imprisonment in other cases.
384. Direction of warrant for execution.
385. Warrant with whom to be lodged.
386. Warrant for levy of fine.
387. Effect of such warrant.
388. Suspension of execution of sentence of imprisonment.
389. Who may issue warrant.
390. Execution of sentence of whipping only.
391. Execution of sentence of whipping, in addition to imprisonment.
392. Mode of inflicting punishment.
Limit of number of stripes.
393. Not to be executed by instalments.
Exemptions.
394. Whipping not to be inflicted if offender not in fit state of health.
Stay of execution.
395. Procedure if punishment cannot be inflicted under section 394.
396. Execution of sentences on escaped convicts.
397. Sentence on offender already sentenced for another offence.
398. Saving as to sections 396 and 397.
399. Confinement of youthful offenders in reformatories.
400. Return of warrant on execution of sentence.

CHAPTER XXIX.

Of Suspensions, Remissions and Commutations of Sentences.

Sections.
401. Power to suspend or remit sentences.
402. Power to commute punishment.

CHAPTER XXX.

Of previous Acquitalls on Convictions.

Section.
403. Person once convicted or acquitted not to be tried for same offence.

PART VII.

FOR APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

Of Appeals.

Sections.
404. Unless otherwise provided, no appeal to lie.
405. Appeal from order rejecting application for restoration of attached property.
406. Appeal from order requiring security for good behaviour.
407. Appeal from sentence of Magistrate of the second or third class.
Transfer of appeals to third class Magistrate.
408. Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.
409. Appeals to Court of Session how heard.
410. Appeal from sentence of Court of Session.

SECTIONS.
411. Appeal from sentence of Presidency Magistrate.
412. No appeal in certain cases when accused pleads guilty.
413. No appeal in petty cases.
414. No appeal from certain summary convictions.
415. Proviso to sections 413 and 414.
416. Saving of sentences on European British subjects.
417. Appeal on behalf of Government in case of acquittal.
418. Appeal on what matters admissible.
419. Petition of appeal.
420. Procedure when appellant in jail.
421. Summary rejection of appeal.
422. Notice of appeal.
423. Powers of Appellate Court in disposing of appeal.
424. Judgments of subordinate Appellate Courts.
425. Order by High Court on appeal to be certified to lower Court.
426. Suspension of sentence pending appeal. Release of appellant on bail.
427. Arrest of accused in appeal from acquittal.
428. Appellate Court may take further evidence or direct it to be taken.
429. Procedure where Judges of Court of appeal are equally divided.
430. Finality of orders on appeal.
431. Abatement of appeals.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

SECTIONS.
432. Reference by Presidency Magistrate to High Court.
433. Disposal of case according to decision of High Court.

SECTIONS.

Direction as to costs.

434. Power to reserve questions arising in original jurisdiction of High Court.

Procedure when question reserved.

435. Power to call for records of inferior Courts.

436. Power to order commitment.

437. Power to order inquiry.

438. Report to High Court.

439. High Court's powers of revision.

440. Optional with Court to hear parties.

441. Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

442. High Court's order to be certified to lower Court or Magistrate.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

SECTIONS.

443. Magistrates who may inquire into and try charges against European British subjects.

444. Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

445. Cognizance of offence committed by European British subject.

446. Sentences which may be passed by Provincial Magistrates.

447. When commitment is to be to Court of Session and when to High Court.

SECTIONS.
448. Trial of offences of which one is, and the others are not, punishable with death or transportation for life.
449. Sentences which may be passed by Court of Session.
Procedure when Sessions Judge finds his powers inadequate.
450. Procedure when Sessions Judge is not an European British subject.
451. Mixed jury for trial of European British subjects.
452. Trial of European British subject and Native jointly accused.
When Native may claim separate trial.
453. Procedure on claim of person to be dealt with as European British subject.
454. Failure to plead status a waiver.
455. Trial under this chapter of person not an European British subject.
456. Right of European British subject unlawfully detained to apply for order to be brought before High Court.
457. Procedure on such application.
458. Territories throughout which High Court may issue such orders.
459. Application of Acts conferring jurisdiction on Magistrates or Courts of Session.
460. Jury for trial of Europeans or Americans.
461. Jury when European or American charged jointly with one of another race.
462. Summoning and empanelling jurors under section 451 or 460.
463. Conduct of criminal proceedings against European British subjects, &c.

CHAPTER XXXIV.

LUNATICS.

SECTIONS.
464. Procedure in case of accused being lunatic.
465. Procedure in case of person committed before

SECTIONS.

Court of Session or High Court being lunatic.

466. Release of lunatic pending investigation or trial.

Custody of lunatic.

467. Resumption of inquiry or trial.

468. Procedure on accused appearing before Magistrate or Court.

469. When accused appears to have been insane.

470. Judgment of acquittal on ground of lunacy.

471. Person acquitted on such ground to be kept in safe custody.

472. Lunatic prisoners to be visited by Inspector-General.

473. Procedure where lunatic prisoner is reported capable of making his defence.

474. Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

475. Delivery of lunatic to care of relative.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

SECTIONS.

476. Procedure in cases mentioned in section 195.

477. Power of Court of Session as to such offences committed before itself.

478. Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

479. Procedure of Civil Court in such cases.

480. Procedure in certain cases of contempt.

481. Record in such cases.

482. Procedure where Court considers that case should not be dealt with under section 480.

SECTIONS.

483. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.
484. Discharge of offender on submission or apology.
485. Imprisonment or committal of person refusing to answer or produce document.
486. Appeals from convictions in contempt-cases.
487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

SECTIONS.

488. Order for maintenance of wives and children.
Enforcement of order.
Proviso.
489. Alteration in allowance.
490. Enforcement of order of maintenance.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

SECTION.

491. Power to issue directions of the nature of a *habeas corpus*.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

Of the Public Prosecutor.

Sections.
492. Power to appoint Public Prosecutors.
493. Public Prosecutor may plead in all Courts in cases under his charge.
Pleaders, privately instructed, to be under his direction.
494. Effect of withdrawal from prosecution.
495. Permission to conduct prosecution.

CHAPTER XXXIX.

Of Bail.

Sections.
496. Bail to be taken in case of bailable offence.
497. When bail may be taken in case of non-bailable offence.
498. Power to direct admission to bail or reduction of bail.
499. Bond of accused and sureties.
500. Discharge from custody.
501. Power to order sufficient bail when that first taken is insufficient.
502. Discharge of sureties.

CHAPTER XL.

Of Commissions for the Examination of Witnesses.

Sections.
503. When attendance of witness may be dispensed with.
Issue of commission, and procedure thereunder.

SECTIONS.
504. Commission in case of witness being within Presidency-town.
505. Parties may examine witness.
506. Power of Provincial Subordinate Magistrate to apply for issue of commission.
507. Return to commission.
508. Adjournment of inquiry or trial.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

SECTIONS.
509. Deposition of medical witness.
Power to summon medical witness.
510. Report of Chemical Examiner.
511. Previous conviction or acquittal how proved.
512. Record of evidence in absence of accused.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

SECTIONS.
513. Deposit instead of recognizance.
514. Procedure on forfeiture of bond.
515. Appeals from, and revision of, orders under section 514.
516. Power to direct levy of amount due on certain recognizances.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

SECTIONS.
517. Order for disposal of property regarding which offence committed.
518. Order may take form of reference to District or Sub-Divisional Magistrate.

SECTIONS.
519. Payment to innocent purchaser of money found on accused.
520. Stay of order under sections 517, 518 or 519.
521. Destruction of libellous and other matter.
522. Power to restore possession of immoveable property.
523. Procedure by police upon seizure of property taken under section 51 or stolen.
Procedure where owner of property seized unknown.
524. Procedure where no claimant appears within six months.
525. Power to sell perishable property.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

SECTIONS.
526. High Court may transfer case, or itself try it.
Notice to Public Prosecutor of application under this section.
527. Power of Governor-General in Council to transfer criminal cases and appeals.
528. District or Sub-Divisional Magistrate may withdraw or refer cases.
Power to authorize District Magistrate to withdraw classes of case.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

SECTIONS.
529. Irregularities which do not vitiate proceedings.
530. Irregularities which vitiate proceedings.
531. Proceedings in wrong place.
532. When irregular commitments may be validated.

SECTIONS.
533. Non-compliance with provisions of section 164 or 364.
534. Omission to ask question prescribed by section 454, clause 2.
535. Effect of omission to prepare charge.
536. Trial by jury of offence triable with assessors.
Trial with assessors of offence triable by jury.
537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.
538. Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

SECTIONS.
539. Courts and persons before whom affidavits may be sworn.
540. Power to summon material witness, or examine person present.
541. Power to appoint place of imprisonment.
542. Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.
543. Interpreter to be bound to interpret truthfully.
544. Expenses of complainants and witnesses.
545. Power of Court to pay expenses or compensation out of fine.
546. Payments to be taken into account in subsequent suit.
547. Moneys ordered to be paid recoverable as fines.
548. Copies of proceedings.
549. Delivery to Military authorities of persons liable to be tried by Court-martial.
Apprehension of such persons.
550. Powers of superior officers of police.
551. Power to compel restoration of abducted females.
552. Compensation to person groundlessly given in charge in Presidency-town.

SECTIONS.

553. Power of chartered High Courts to make rules for inspection of records of subordinate Courts.
Power of other High Courts to make rules for other purposes.
554. Forms.
555. Case in which Judge or Magistrate is personally interested.
556. Power to decide language of Courts.
557. Powers of Governor-General in Council and Local Government exercisable from time to time.
558. Pending cases.

SCHEDULE I.—Enactments repealed.

SCHEDULE II.—Tabular statement of offences.

SCHEDULE III.—Ordinary powers of Provincial Magistrates.

SCHEDULE IV.—Additional powers with which Provincial Magistrates may be invested.

SCHEDULE V.—Forms.

BENGAL SECRETARIAT LIBRARY.

THE CODE OF CRIMINAL PROCEDURE, 1882.

An Act to consolidate and amend the law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882": and shall come into force on the first day of January, 1883;

Local extent.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any

Ch. I. S. 2.

special form of procedure prescribed, by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

The following sections of the Code relating to the action of the Police have been expressly extended to the Towns of Calcutta and Bombay:

Sec. 54 which empowers any Police officer without an order from a Magistrate and without a warrant to arrest persons under certain specified circumstances.

Sec. 68 regarding the service of summons by a Police-officer.

Sec. 84 regarding execution of a warrant of arrest issued by a Magistrate beyond his local jurisdiction.

Sec. 202 regarding an order by a Magistrate for a Police investigation into the truth of a complaint which on examination of the complainant he has reason to distrust.

(*b*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(*c*) heads of villages in the Presidency of Fort Saint George; or

(*d*) village Police-officers in the Presidency of Bombay:

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras.

(Ss. 1, 2, 111, 529, 535, 540, 541.)

Sections 174, 175, 176 relate to inquests which in the Town of Madras would be regulated by Act VIII (Mad.) of 1867.

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

(Ss. 2, 82, 86.)

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any

enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

(S. 2, last para.)

References to Code of Criminal Procedure and other repealed enactments.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

(S. 2, paras. 3, 4.)

Expressions in former Acts.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate", "Subordinate Magistrate, first class", and "Subordinate Magistrate, second class", shall respectively be deemed to mean "Magistrate of the first class", "Magistrate of the second class", and "Magistrate of the third class"; the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate", the expression "Magistrate of the district" shall be deemed to mean "District Magistrate", and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Interpretation clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

"Complaint":

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

Ch. I. S. 4.

See section 196 which empowers certain Magistrates to take cognizance of offences on complaint or otherwise, and sections 200—204 for the procedure on receipt of a complaint.

"Investigation":

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf:

Under this definition no investigation would be held by a Magistrate. Any action taken by a Magistrate would be an inquiry.

The concluding portion of this definition refers to a case, such as when a Magistrate on receipt of a complaint sees reason to distrust its truth, and, under S. 202, directs a local investigation by such person as he thinks fit to appoint for the purpose of ascertaining the truth or falsehood of the complaint before he issues process for the attendance of the accused.

"Inquiry":

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

"Judicial Proceeding":

(*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

"Writing and "written":

(*e*) "Writing" and "written" include "printing", "lithography", "photography", "engraving", and every other mode in which words or figures can be expressed on paper or on any substance:

"Sub-division":

(*f*) "Sub-division" means a sub-division made under this Code of a District:

It also means all existing sub-divisions which are not usually put under the charge of a Magistrate section 3, *post*.

"Province":

(*g*) "Province" means the territories for the time being under the administration of any Local Government:

The General Clauses' Act, I of 1868, section 2, cl. x declares that "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner.

"Presidency-town":

(*h*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

"High Court":

(*i*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

The definition of High Court here given is a general definition. It would not however apply to Chapter XXIII 'of trials before High Courts' (except to section 308,) as a special definition is given in section 267 applicable to that chapter.

A distinction is made by section 185 between the Recorder of Rangoon and the Judicial Commissioner of British Burmah in determining, in cases of doubtful jurisdiction, the Court by which a trial on inquiry should be held, such matters being ordinarily left to High Court.

"Chief Justice":

(*j*) "Chief Justice" includes also the senior Judge of a Chief Court:

"Advocate General":

(*k*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

"Clerk of the Crown":

(*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

The following are among the functions of the Clerk of the Crown under the Code: to summon witnesses whom the accused after commitment to the High Court may wish to be summoned to give evidence on the trial (section 211); to receive the charge, record of the inquiry, and any exhibit (section 218); to frame a charge, where a person has been committed for trial without one, or to add to or otherwise alter a charge (section 226); before the 1st April in each year to prepare lists of common and special Jurors (section 313): to publish in the Gazette before the 25th April preliminary lists and before 1st May revised lists of such Jurors (section 314): to take affidavits and affirmations to be used before a High Court or any officer of such Court (section 539).

Ch. I.

S. 4.

(*m*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Public Prosecutor":

(*n*) "Pleader" used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

"Pleader":

The Legal Practitioners' Act, XVIII of 1879 is the law on this subject.

(*o*) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer present at the Police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present:

"Police-station":

"Officer in charge of a Police-station":

This definition embodies section 186 of the Code of 1872.

Section 550 provides for the exercise by Police-officers of superior rank of the power of an officer in charge of a Police-station.

(*p*) "Offence" means any act or omission made punishable by any law for the time being in force:

"Offence":

(*q*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Cognizable offence":

"Cognizable case":

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant:

"Non-cognizable offence":
"Non-cognizable case":

(r) "Bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

"Bailable offence":
"Non-bailable offence":

(s) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

"Warrant-case":

(t) "Summons-case" means a case relating to an offence not so punishable:

"Summons-case":

(u) "European British subject" means—

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

"European British subject":

(2) any child or grand-child of any such person by legitimate descent:

(S. 71.)

(v) "Chapter" means a chapter of this Code; and "Schedule" means a schedule hereto annexed:

"Chapter":
"Schedule":

(w) "Place" includes also a house, building, tent and vessel.

"Place."

Words which refer to acts done extend also to illegal omissions; and

Words referring to acts.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Words to have same meaning as in Penal Code.

Ch. I.

S. 5.

Trial of offences under Penal Code.

Trial of offences against other Laws.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

(Ss. 6, 7, 8, 11, 63, para. 1, *Expl.*)

S. 549 enables the Governor-General in Council to make rules as to the cases in which persons subject to military law shall be tried by a Civil Court or by Court Martial, and for the course to be taken by a Magistrate in such cases.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session:
II.—Courts of Presidency Magistrates:
III.—Courts of Magistrates of the first class:
IV.—Courts of Magistrates of the second class:
V.—Courts of Magistrates of the third class.

(Ss. 5, 19.)

B.—Territorial Divisions.

Sessions Divisions:

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Districts.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Power to alter Divisions and Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Existing Division and Districts maintained till altered.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Presidency-towns to be deemed Districts.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

(Ss. 12, 13, 14, 38.);

Power to divide Districts into Sub-divisions.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

Existing Sub-divisions maintained.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

(S. 39.)

A Cantonment Magistrate is under Act III of 1880 S. 3 to be deemed a Magistrate in charge of a division (now subdivision) of a District within the meaning and for the purposes of this Code.

C.—Courts and Offices outside the Presidency-towns.

Ch II.

Ss. 9—12.

Court of Session.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

(Ss. 15, 18.)

The officers mentioned in para. 2 are consequently Courts of Session to the extent of their respective powers and are included within that term when used in this Code.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(S. 35.)

It has been held that the term 'Zillah Magistrate' used in the Bombay Regulations signifies only the Magistrate of the District. Probhakar Saman, 3 Bomb. 11. *Crown cases :* Hira Jiva, 7 Ibid 59.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(S. 55.)

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Govern-

ment, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their Jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

(Ss. 37, 49.)

This section which takes the place of S. 49 of the Code of 1872 extends the powers of a District Magistrate. Under S. 49 a District Magistrate could authorise any Magistrate subordinate to him to entertain complaints arising within certain local limits only "under general or special orders of the Local Government." A District Magistrate is now competent to exercise this power "subject to the control of the Local Government" and unless restricted by express orders would be able to act in this respect.

All Magistrates of Districts have been empowered to act under S. 12 in the following Provinces: BENGAL (*Gaz.* 1873, p. 67): MADRAS (*Gaz.* 1873, p. 717): NORTH-WESTERN PROVINCES (*Gaz.* 1873, p. 3): PUNJAB (*Gaz.* 1873, p. 75): BRITISH BURMAH (*Gaz.* 1873, p. 5.)

The following Circular (No. 23, dated 23rd May 1871) issued by the Government of Bengal under S. 49 of the Code of 1872 is important in connection with S. 12 of this Code.

The Lieutenant-Governor, considering that it is desirable that the Magistrates of Districts should have the fullest possible authority and responsibility in regard to the administration of the whole of the districts, is of opinion that the authority of Government to invest particular officers with general powers should not ordinarily be exercised, and should be confined to special cases and special circumstances. Ordinarily he would leave the delegation to any Magistrates subordinate to the Magistrates of the District (whether they are in charge of Sub-Divisions or not) of the power to entertain cases to the Magistrate of the District himself, who will act under the authority conferred on him by S. 12 of the present Code.

It is to be understood that the former orders authorizing Magistrates of Districts to delegate the power of hearing complaints in certain circumstances, are not by implication to limit that power to those circumstances; the fullest authority is now given to Magistrates of Districts to exercise their discretion in empowering any Magistrate or Subordinate Magistrate to hear all cases or any classes of cases or any particular case, according to his jurisdiction and fitness.

At the same time it must be particularly understood that these orders are not intended to encourage Magistrates of Districts to divest themselves of criminal functions; on the contrary, it is expected that they will exercise the utmost discretion in regard to the power entrusted to the Magistrates subordinate to them, whether at head-quarters or in Subdivisions; and since they have been so much relieved by the transfer of rent suits, the Lieutenant-Governor considers that they should them-

Ch. II.
S. 12.

selves take a large share of the criminal business. With this latter view the Lieutenant-Governor is pleased to cancel the orders under which Joint Magistrates are usually placed in charge of a head-quarter's subdivision. He thinks that the Magistrate of the District should ordinarily himself undertake this charge when he is at or near head-quarters, and that it should only be delegated to a subordinate when he is absent in other parts of the district. Exceptions may only be made in the case of the 24-Pergunnahs and any other district in which the general duties of the Magistrate and Collector are of a very peculiar character.

The instructions contained in the last paragraph will, however, not prevent the Magistrate from empowering any of his subordinates in the head-quarter portion of the district to hear petitions in any cases, or classes of cases, or coming from any locality. This distribution of the work will require great judgment and discrimination. Things should be so arranged that neither on the one hand should the Magistrate lose sight of cases which he ought to see or regulate, nor on the other should parties be unnecessarily driven about from one Magistrate to another before being heard. The great thing is, that the people should not be harassed more than can in any way be avoided. The Lieutenant-Governor fears, from what he has heard, that at present they are at some places far too much handed about from one Court to another, and he trusts that this will not be the case in future. It must be remembered that only one officer at one place can have the power to make over a petition to any other Magistrate, *viz.*, the Magistrate of the District at head-quarters, and the Subdivisional Magistrate in his Subdivision, so that it cannot legally be that the Magistrate should hand over to the Joint Magistrate and the Joint Magistrate to the Deputy. It will generally be better that Magistrates whom it is desired to employ in that capacity, and whose discretion can be trusted, should be empowered to hear certain classes of cases arising within certain local limits, the Magistrate of the District always keeping a watch over their proceedings besides retaining certain criminal works himself.

Ordinarily it will of course be desirable that Magistrates in charge of Subdivisions should have a general authority to hear complaints and receive cases in their Subdivision. The Magistrate of the District should exercise his own discretion in empowering any other Magistrate in a Subdivision to hear any cases or classes of cases, subject to the power of withdrawing any case which is possessed by the Magistrate of the Subdivision.

It should be understood, however, that even in the case of Subdivisional Magistrates, it is not to be taken as a matter of course that they are to be empowered to hear all cases without reserve. Much must depend on the character of the Magistrate and of the locality, and the Magistrate of the District should limit the power to hear any classes of cases which he does not think it desirable wholly to entrust to the Subdivisional Magistrate. He must always remember that his own responsibility is as complete in the Subdivisions as in any other portion of the district.

The Lieutenant-Governor specially desires Subdivisional Officers to keep the Magistrate of the District promptly informed of any emergent case which they may have taken up under S. 68 (S. 142 of the present Code) or of any peculiar difficult or important case which may

come before them in the exercise of the powers entrusted to them, so that the Magistrate of the District may have an early opportunity of advising them and of withdrawing the case if necessary. They should keep him well informed of any action they may take regarding the removal of nuisances and such like matters.

It must be very fully understood that Subdivisional Magistrates are most entirely under the control of the Magistrate of the District, and no attempt to escape entire and honest subordination will be tolerated. The Lieutenant-Governor hopes that he will have no occasion to interfere for the thorough and complete maintenance of this principle.

Magistrates of District, should lose no time in supplying by their own order, under S. 66B (S. 49 of the present Code), the want of jurisdiction to hear cases which may be occasioned by the withdrawal of powers heretofore conferred by Government, and they are directed to submit to the Commissioners of Divisions a report showing what arrangements they have made for the distribution of the criminal work of the whole district. They are competent to alter this distribution from time to time, and to withdraw any of the powers which they have given to any Magistrate, but should keep the Commissioner generally informed of the nature of the arrangements which they make. And Commissioners will be so good as to submit to Government a report showing the arrangements made in the several districts of their Divisions. They should give Magistrates the benefit of their advice with reference both to their own experience and to what they may see of the working of different practices in the various districts, and they should inform Government of their opinion of the arrangements made, and bring to notice anything that seems to them faulty or objectionable, and anything that seems specially worthy of imitation in other districts.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charges as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

The Local Government may delegate its powers under this section to the District Magistrate.

(S. 40.)

The ordinary powers of a Subdivisional Magistrate are set forth in Sch. III, No. 4. It would seem that under the terms of section 12 the jurisdiction and powers of such Magistrates would extend throughout the District, though in the exercise of their powers as Subdivisional Magistrates they might be restricted to the limits of the particular Subdivision.

A Cantonment Magistrate is under Act III of 1880 section 3 to be deemed a Magistrate in charge of a Division (now a Subdivision) of a District within the meaning and for the purposes of this Code.

Special Magistrates.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(S. 42.)

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exercisable by Bench in absence of special direction.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the

Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

(Ss. 50, 51.)

Two or more Special Magistrates of the Town of Benares may sit together as a Bench for the trial of cases within the municipal limits of that Town.—*N. W. P. Gaz*, 1874, p. 1175.

The following orders have been issued by the Government of Bengal with regard to Benches of Magistrates in the following Districts,—Dinagepore, Malda, Rungpore, Chittagong, Tipperah, Dacca, Backergunj, Mymensingh, Shahabad, Sarun, Tirhoot, Kamroop:

1. Under the direction of the Magistrate of the District, any two or more of the Honorary Magistrates in any District may, in that District, sit as a Bench in company with the Magistrate of the District, or the Subdivisional Magistrate, or any salaried Magistrate subordinate to the Magistrate of the District exercising not less than second class powers, whom the Magistrate of the District may depute for that purpose; and any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of the first class, and with powers of summary trial under S. 260 of the Criminal Procedure Code.

2. Under the special order of the Magistrate of the District, any two Magistrates, honorary or salaried, of whom one is vested with not less than second class powers, may form a Bench with first class powers, for the trial of any particular case or class of cases, specially referred to them by the Magistrate of the District. Such Bench may also exercise summary powers under S. 260 unless the order of reference is for trial in regular form.

3. Under the direction of the Magistrate of the District, any one of the Honorary Magistrates of a District may sit with any salaried Subordinate Magistrate to form a Bench, and the Bench shall, when so constituted, exercise second class powers in respect of offences cognizable by Magistrates of that class and powers of summary trial under S. 261 of the Criminal Procedure Code, unless any Member of the Bench have first class powers, in which case the Bench may also exercise those powers. If the Magistrate of the first class has summary powers under S. 260, the Bench may exercise those powers.

4. Subject to the general orders of the Magistrate of the District, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for the disposal of offences under Municipal or Towns Acts, and the conservancy clauses of any Police Act, without the assistance of any salaried Magistrate: and such Bench shall exercise third class powers, and powers of summary trial under S. 261 in respect of all such cases.—*Cal. Gaz.*, 1873, pp. 17, 662.

The terms of section 15 enable the Local Government to empower Benches of Magistrates to deal with Miscellaneous cases not being trials which they could not do under section 50 of the Code of 1872. See In the matter of Suffurooddeen, 2 Cal. L. R, 263; (S C.) I. L. R. 3 Cal., 754. It is important that the constitution of the Court should not be changed in the course of a trial. Thus when a Bench of Magistrates invested with 1st class powers commenced the trial of an offence cognizable only by a Magistrate of the 1st class, and at the adjourned trial

Ch. II. — S. 16.

only one of the Magistrates was present and he personally was invested only with inferior powers it was held that he could not proceed with the trial. Baroda Prosunno Chuckerbutty, 2 Cal. L. R., 318.

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

(Ss. 52, 53.)

The following draft rules and instructions for the guidance of Benches of Magistrates, to be established after issue of the Circular, have been issued by the Government of Bengal, Cir. 16, March 25, 1880, power being given to the District Magistrate to make additional rules if approved by the Commissioner.

1. The Bench shall try such cases as its powers enable it to try, and it is authorized to try, arising within the local limits following, or such particular cases as are made over to it by the Magistrate of the district or any Magistrate empowered to make over cases. It can only entertain of its own motion such complaints as the Magistrate of the district may authorize it to entertain both in respect of local limit and classes of cases.

[*Here enter Local Limits.*]

The Magistrate of the district may nominate any single member or members of a Bench, or any salaried Magistrate, to receive complaints of cases triable by the Bench, and which the Magistrates nominated are themselves empowered to try or commit for trial. In the event of the complaint not being received by the Bench itself, the District or Sub-divisional Magistrate may transfer the case to the Bench, and issue the necessary processes for bringing the accused and the witnesses before the Bench at its regular sittings.

2. The Bench shall sit at the place and on the dates mentioned below. The Honorary Magistrates will sit in the rotation arranged by the Magistrate of the district or division, but any Magistrate not named may sit, provided he is not personally interested in the case before the Bench.

[*Here enter place and ordinary dates of sitting.*]

3. The Bench may hold one or more adjourned sittings if this be found necessary for the disposal of business or of part-heard cases ; but

it shall be open to the Bench at the close of its regular sitting either to apply to the District or Sub-divisional Magistrate to transfer from their file any unheard cases, or to postpone them to next Bench day, as may seem most convenient.

4. The Chairman of the Bench for the time being shall be the Magistrate of highest powers present at a sitting. Where two or more are of equal powers, the Bench may elect its own Chairman, provided always that it shall be in the discretion of the Magistrate of the District to appoint the Chairman for each time of sitting, or generally.

5. The Chairman shall maintain order, conduct the proceedings of the Court, and exercise all the functions in that behalf usually exercised by a Magistrate when sitting alone. It shall be open to any member of the Bench to put any question to the witnesses, either direct or through the Chairman as the latter may deem advisable, and to suggest any matter for the Chairman's consideration.

6. Each member of the Bench shall have a voice in deciding as to the admissibility of evidence and in the finding and sentence. In a Bench of three or other uneven number of members the opinion of the majority shall prevail. When the numbers are even, the Chairman shall have a casting vote.

7. In the trial of ordinary cases the Chairman shall generally record the evidence and judgment, but such duty may, with his consent, be performed by any one of his colleagues.

In the trial of summary cases, where the Bench has been invested with summary powers, the necessary record shall be prepared by the Chairman or one of his colleagues, or by means of the Clerk of the Court, but in every case the record must be signed by each member of the Bench who is present.

8. Any part-heard case postponed to a further sitting of the Bench may be proceeded with if any member of the Bench has been present at the previous hearing in the case, but subject to the provisions of section 350 of the Code.

9. The Bench may refer any point of law for the opinion of the Magistrate of the district or division, or of any first-class Magistrate appointed by the Magistrate of the district for that purpose, and the Magistrate may certify his opinion thereon.

10. When any person is convicted in an appealable case by the casting vote of the Chairman, the Chairman shall then and there ask him if he wishes to appeal, and if he desires to do so, shall forthwith record his appeal in brief, and forward the case to the Magistrate, intimating to the person convicted that he may file any grounds of appeal he pleases.

A complicated and somewhat difficult case should not be referred by the District Magistrate to a Bench. Bholanath Sen, I. L. R., 2 Cal., 23.

Subordination of Magistrates and Benches to District Magistrate:

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules con-

Ch. II.
Ss. 17, 18.

sistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Sub-divisional Magistrate.

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Subdivision shall be subordinate to the Subdivisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

(Ss. 37, 41.)

The subordination of Magistrates to the Sessions Judge would thus be restricted to cases regularly coming before him on appeal (section 408) or committed for trial in his Court (section 193); to matters taken up by him under section 435 in order to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, or the regularity of any proceedings; and to cases in which a person ordered by a Magistrate to give security for more than one year does not give it. (section 123.)

District Magistrates should comply with all requisitions for records, returns, and information made by Sessions Judges with regard to any case appealable to them or referable by them to the High Court whether decided by the District Magistrate or by other Magisterial officers of the District, or made by Sessions Judges under orders of the High Court in the exercise of their duty and superintendence over the Subordinate Courts. They should also render any explanation which Sessions Judges may require from them and obtain and submit any explanation which Sessions Judges may require from Subordinate Magistrates in order to assist the appellate Courts in respect of these classes of cases above referred to. Government of India, No. 1753. Nov. 3rd, 1876, Circulated by Calcutta High Court, No. 4. Dec. 16th, 1876.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Pre-

sidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

(Act IV, 1877, Ss. 8, 9.)

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

(Act IV, 1877, S. 8, para 5.)

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

(Act IV, 1877, S. 8, last para, 9, last para.)

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

(Act IV, 1877, S. 9.)

E.—Justices of the Peace.

Justices of the Peace for the Mufussil.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

(Act II, 1869, S. 3.)

The jurisdiction of such Justices of the Peace would be confined to cases against European British subjects, but it should be observed, first, that only European British subjects can be so appointed Justices of the Peace, and, next, that unless the officer so appointed is also a Magistrate of the first class, a Sessions Judge, or an Assistant Sessions Judge specially empowered by the Local Government and of at least three years' service in that office, he is not competent to inquire into or try any charge against such a person. (Sections 443, 444.)

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

(Act II 1869, S. 4.)

The jurisdiction of a Justice of the Peace so appointed would be of a different nature from that of one appointed under section 22. His jurisdiction would be limited to Presidency Towns; his duties and powers are prescribed by various local Acts.

Present Justice of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

(Act II 1869, S. 10.)

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

(13 Geo. III, c. 63, S. 38.)

(Act X, 1875, S. 152: Act IV, 1877, S. 8.)

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

(S. 9.)

Suspension and removal of Justices of the Peace.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government

Ch. III. S. 28.

may suspend or remove from office any Justice of the Peace appointed by it.

(Act II, 1869, S. 9.)

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

(S. 8.)

"Subject to the other provisions of the Code."—Thus, for instance, except in certain cases of contempt of Court committed in its view or presence (section 480) or of certain offences such as perjury, forgery or offences against public justice of various kinds committed in or in relation to any proceeding in such Court (section 477), no Court of Session can take cognizance of any offence as a Court of original jurisdiction unless upon commitment by a competent Court or Magistrate (section 194) or on a reference made by a District Magistrate in exercise of special powers under sections 30, 34, or by an Assistant Sessions Judge. (Section 380).

So also no Court can take cognizance of certain offences committed in contempt of the authority of a public servant or committed in or in relation to any proceeding in any Court or committed by a party to a proceeding in any Court with respect to a document given in evidence therein without special sanction or complaint of that or a superior Court (section 195); or of any offence against the State without the authority or on complaint of Government (section 196); or of an offence committed by a Judge or public servant not removeable from office without sanction of Government unless special sanction be previously accorded (section 197): or of an offence under Chapter XIX (Breach of Contract) or Chapter XXI (Defamation) or sections 493—496 (relating to marriage) of the Penal Code except on complaint of an aggrieved person (section 198): or of an offence under section 497 (adultery) or section 498 (enticing away of a married woman) of the Penal Code without complaint of the husband of the woman or her temporary guardian. The jurisdiction of a Magistrate would further depend upon the due observance of the conditions requisite for initiation of the proceedings (sections 191, 192).

A High Court may take cognizance of any offence upon a commitment made to it. Such commitment in a Presidency Town may be made by any Presidency Magistrate, in which case the accused may be a European British subject, a native of British India or of any other country, and the offence may be one triable exclusively by a High Court,

or one which in the opinion of the Magistrate ought to be tried by such Court. But as regards cases arising in British India outside Presidency Town, the committing Magistrate must himself be a European British subject, a Justice of the Peace and a Magistrate of the first class, (section 413), the offence charged must be one punishable with death or with transportation for life (section 467), and the accused must be either a European British subject or one charged jointly with a European British subject who has been so committed for trial. (Section 452). Similar cases but for less heinous offences should be committed by such Magistrates to Sessions Judges who must also be European British subjects (section 441). If the Sessions Judge considers that the maximum sentence which he can pass, *viz.*, imprisonment for one year or fine or both, is not adequate for the offence committed he is required to record his opinion to that effect, stay the trial, and transfer the case to the High Court. (Section 449).

Offences under other laws.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

(S. 8, para. 1.)

An offence punishable under a local or special law with fine only would be triable by the High Court or any Court constituted under this Code.

An offence under the Indian Railway Act (IV of 1879) can be tried only by a Presidency Magistrate or a Magistrate whose powers are not less than those of the second class. Act IV of 1879, S. 50.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other Provinces in which there are Deputy Com-

Ch. III.

Ss. 30, 31.

missioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

(S. 36.)

Any District Magistrate so empowered can pass sentence of imprisonment not exceeding seven years including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law, provided that every sentence of imprisonment exceeding three years shall be subject to the confirmation of the Sessions Court. Section 34. Section 380 provides for confirmation of such orders and section 408 for appeals.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

(Ss. 15, 17, 18.)

The powers exercised by an Assistant Sessions Judge are, generally, the same as those which may be conferred under section 30 on District Magistrates in certain specified parts of British India, except in the trial of European British subjects which a specially empowered District Magistrate can hold only as a Magistrate and Justice of the Peace if he is himself a European British subject: the sentence of imprisonment which the latter officer can pass in such a case cannot exceed three months or fine of one thousand Rupees or both (section 446); on the other hand, if the Assistant Sessions Judge is qualified by three years' service in that office and by being himself a European British subject (section 444), he can exercise the full powers of a Court of Session and pass sentence of imprisonment not exceeding one year or fine (without limit) or both (section 449). There are the same rules for confirmation of sentence (section 380), and for

appeals (section 408). The form of trial would be different. Cases tried by a specially empowered District Magistrate would be tried under Chapter XXI as trials by Magistrates in warrant cases, whereas, the Assistant Sessions Judge being a Court of Session, trials held by him would be either by Jury or with the assistance of Assessors according to the practice in force.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely :—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class :	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law ; Fine not exceeding one thousand rupees ; Whipping.
(*b*) Courts of Magistrates of the second class :	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; Fine not exceeding two hundred rupees ; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month ; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

(S. 20.)

The last para. of this section is important as it contains an amendment of S. 20, the corresponding section, of the Code of 1872.

"Imprisonment" means imprisonment of either description (*i. e.*, rigorous or simple) as defined in the Indian Penal Code.—Act I, 1868, S. 2, cl. 18

The limit of sentence is generally prescribed by the law defining the offence, and it is within such limits that the powers of individual

Ch III.
Ss. 32, 33.

Magistrates should be exercised subject to jurisdiction to try the particular offence which is set forth in Sch. II, col. 8 of this Code, and to special local jurisdiction (see Chapter XV). But a special law (Act VI, 1864) declares what offences are alone punishable with whipping as the sole or additional punishment.

Ss. 73, 74, Penal Code, thus provide for sentences of solitary confinement:—

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months if the term of imprisonment shall exceed one year.—S. 73.

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.—S. 74.

S. 33 *post*, provides for the award of imprisonment in default of payment of fine.

Under certain circumstances the powers of Magistrates in passing sentence are enhanced. See S 35, *post*.

Power of Magistrates to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default:

Provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

(S. 20, Expl. 309.)

S. 64, Indian Penal Code, declares that, in default of payment of fine, it shall be competent to the Court to direct that an offender shall suffer imprisonment for a term, which shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence; and S 65 declares that, *if the offence be punishable with imprisonment as well as fine*, such imprisonment, "in default of payment of fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence."

Thus in a case of theft (S. 379, Penal Code), the powers of a Magistrate of the first class would be imprisonment for two years and fine of 1,000 rupees, or, in default of payment, imprisonment for six months, *i. e.*, one-fourth of two years, the maximum punishment that he could inflict. In cases regarding offences punishable with imprisonment as well as fine, Magistrate of the second class cannot, in default of payment of fine, pass a greater sentence of imprisonment than six weeks, *i. e.*, one-fourth of six months—Phoolman Tewaree, 6. W. R., 51. Similarly, one week (*i. e.*, one-fourth of one month) would be the maximum sentence in such cases for a Magistrate of the third class.

But if the convict be a European British subject, a Magistrate of the first class, a Justice of the Peace and himself a European British subject, can only pass a sentence not exceeding three months' imprisonment, or fine up to 1,000 rupees, or both. The imprisonment awarded on default of payment of fine cannot exceed one-fourth of three months.

Sections 64, 65 of the Indian Penal Code as originally enacted applied only to sentences passed for offences committed under the Indian Penal Code, but it has further been enacted by Act I, 1868 (General Clauses Act) section 5, passed on 3rd June 1868, that these sections "shall apply to all fines imposed under the authority of any Act hereafter passed unless such Act shall contain an express provision to the contrary," and this has been reproduced in Act VIII, 1882, S. 1. An earlier Act (V. of 1867) of the Bengal Council contains a similar provision for all Acts of that Council.

It should be noted that the last para. of section 309 of the Code of 1872 has not been reproduced. That para. declared that, "Where a person is sentenced to fine only, the Magistrate may award such "term of imprisonment in default of payment of fine as is allowed "by law, provided the amount does not exceed the Magistrate's powers "under this Act." The present Code by omitting this seems to have made no alteration in the law. The powers of Criminal Courts would in the first instance be regulated by sections 64, 65 of the Penal Code or any special law on the subject, but those of Magistrates would next be restricted by the powers of each Magistrate under section 32 of this Code, that is to say, supposing that under the law first quoted a sentence of imprisonment for a certain term could be passed in default of payment of fine, a Magistrate's sentence would be limited by the term of imprisonment which as a substantive sentence he could pass under section 32. If, however, the sentence of fine is a sentence in addition to imprisonment, then the Magistrate's powers in awarding imprisonment in default of payment of fine are limited to one-fourth of his ordinary powers. There is no such restriction imposed where the sentence is one of fine only, and therefore it would seem that the period of imprisonment in such a case depends upon the terms of sections 64, 65 of the

Ch. III.

S. 34.

Indian Penal Code and the Magistrate's general powers under section 32 of this Code. See Darba and others, I. L. R. 1 All. 461 : Mahomed Saib, I. L. R., 1 Mad., 277.

A sentence of fine cannot fix a term within which the fine shall be paid, such being contrary to S. 68 and the subsequent sections of the Penal Code.—Cal. H. Ct., 59 and 326, 1862.

The Government of Bengal (Circular 1060T, 1864) has enjoined especial caution on all Magistrates and Sub-Divisional Officers, that, in all cases in which a person is sentenced to imprisonment in default of payment of fine, if the fine be paid, immediate information thereof be given to the Officer in charge of the Jail, so that the prisoner be not kept in illegal confinement.

In a case in which the convict had undergone a sentence of imprisonment on default of payment of fine, notwithstanding that the fine had been paid, the Bombay High Court held that it had no power to order the fine to be refunded, but directed application to be made to Government.—Natha Mula, 4 Bomb., 37, *Crown Cases.*

If the offence be punishable with fine only, the term of imprisonment in default of payment of the fine cannot exceed two months when the fine does not exceed fifty rupees ; four months, when the fine does not exceed one hundred rupees ; six months in any other case.—S. 67, Penal Code ; and it can only be simple. Act VIII, 1882, S. 3.

The imprisonment in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.—S. 66, but for offences punishable with fine only, it shall be only simple, S. 67 as modified by Act VIII, 1882, S. 3. It shall terminate either on payment or levy by process of law.—S. 68. Or, if only a portion be paid or realised, the imprisonment shall be reduced proportionately, and terminate accordingly.—S. 69.

In Madras, the High Court holds the Chief Ministerial Officer of a Court personally responsible for giving immediate intimation to the Jail of the payment of a fine imposed on a convict under sentence of imprisonment in default of payment.—Pro. March 12, 1867. Weir, *app.* xxii.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

(S. 36.)

See notes to sections 30, 31.

A District Magistrate cannot exercise these extensive powers in the case of a European British subject. (Section 446.)

Sentence in cases of conviction of several offences at one trial

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

(S. 314.)

The last para. is new, being in accordance with the judgment in the case of Rama Bhivgoda, I. L. R., 1 Bomb., 223.

Except as provided by sections 234, 235, 236, 239 every distinct offence should form the subject of a separate charge and be tried separately (section 233). Many difficulties which have arisen under section 314 of the Code of 1872 now re-enacted in section 35 can be traced solely to a non-observance of this rule. If separate trials are held the sentence that a Magistrate can pass in each case is limited only by his general powers.—In the matter of Daulatia and another I. L. R., 3 All., 305. FULL BENCH. But where a Magistrate sentenced the accused in each of six successive trials to the maximum term of imprisonment he could award, the Madras High Court set the sentences aside and directed the accused to be committed for trial by the Sessions Court. (The facts of these cases are not given in the report, nor is it stated whether one trial should have been held.) Mad. H. Ct. Pro., Aug. 31st, 1874, Weir 243.

Ch. III.

S. 35.

In passing sentence under section 35, the terms of section 71, Penal Code, as amended by Act VIII of 1882, S. 4, should be borne in mind :—

"When anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or, where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

If the Court passing sentence under section 35 desires to convert a sentence or sentences of imprisonment into transportation (section 59, Penal Code), it should note that no sentence of transportation can be for less than seven years, and that to render the conversion legal, the punishment awarded for *each* offence must not be less than seven years' imprisonment.

A general sentence of transportation for two or more offences, where only one (or more) of the punishments awarded is seven years' imprisonment is illegal.—1 W. R., 1, C. L.; Mootkee Kora, 2 W. R., 1; Krishto Soonder Deb, *Ibid*, 5; Toonooram Malee, 3 W. R., 44; Shonaollah and another, 5 W. R., 44, &c., &c.

The Calcutta High Court has held (736, 1864), that when there are in an indictment two separate offences, supported by distinct and separate evidence, a separate sentence should be passed for each offence; the punishment under the second sentence to take effect on the expiry of the first. If, however, there are two or more offences supported by the same evidence, or very nearly so, a verdict of guilty should be entered on the offence covered by the greater portion of the evidence as the gravest in the eye of the law, and a verdict of not guilty on the other charges. The High Court can, on appeal, if it thinks fit, find the prisoner guilty of any offence of which he may have been charged and so acquitted, and reduce the punishment proportionately. And again (892, 1864) it has been held that if, after convicting a prisoner of several offences, a Sessions Judge thinks that a sentence of transportation for life should be passed as an aggregate punishment, but that, though a *legal* sentence for any one offence, it is too *severe* for any *single* offence committed by the prisoner, he may nevertheless pass such sentence for such offence, recording in the other cases that no sentence has been passed in consequence of the previous sentence.

The same rule was laid down in the case of Dalapati Rao (1 Mad., 83), in which the Madras High Court observed that, although the prisoner might have been properly charged in the first instance with both the criminal acts of fraudulently secreting and making away with a letter, and though either act is punishable, under Act XVII of 1854, S. 50, as an offence, without evidence of the other, still, as it appeared that both acts were connected and formed substantially a part of one and the same criminal transaction, and the evidence with reference to such acts was as necessary and material on the first charge as it was on the second, the prisoner must be considered to have been tried and in peril with respect of the whole transaction as one offence on the first

charge. The evidence of the making away with the letter was properly a part of the case in support of the first charge and the strongest proof of it. There was, in fact, no part of the evidence on which the second conviction took place which was not properly evidence on the first charge.

The most common instance in which the question arises whether separate sentences should be passed is when a man has been convicted of housebreaking by night with intent to commit theft (section 457 Penal Code) and also with theft in the house (section 380). The High Courts have not been concurrent in their opinions in this respect. The BOMBAY HIGH COURT (Westropp, *C. J.*, Gibbs, Lloyd and Kemball, *JJ.*), has held that a separate sentence on each of such charges might be passed, provided that the aggregate amount of punishment awarded did not cover that which the case warrants for the greater of the two offences of which the accused persons have been convicted, and provided also that such aggregate punishment did not exceed the jurisdiction of the Court which has convicted the accused Anwar Khan valad Gulkhan and another, 9 Bomb., 172. This case will of course overrule the authority of all previous cases in that Court. It is in accordance with S. 7, Penal Code as now amended by Act VIII, 1882, S. 4.

In MADRAS it has been held that separate sentences may be passed for house-trespass (section 448) and criminal force (section 352), Mad. H. Ct. Pro. April 10, 1872: 7 Mad. Jur., 299: and for dishonestly breaking into a house (section 461) and theft in the house (section 380.) *Id.* Pro. May 8, 1872: 7 Mad. Jur., 300.

In the CALCUTTA HIGH COURT the current of decisions has been against the passing of separate sentences. Tonao Koch, 2 W. R., 63: Chyton Bowra, 5 L. R., 49: Jogun Polloi, 6 W. R., 49: Mussahur Daood, *Id.* 92. Also Ram Churn Kairee, 6 W. R., 39; *per* Peacock, *C. J.*, Kemp, Norman, Seton-Karr, Campbell, *JJ.*

Similarly it has been held that a convict cannot at the same time receive two sentences for rioting (S. 147), and being a member of an unlawful assembly (S. 142), since he could not be guilty of rioting without being a member of an unlawful assembly—Meelan Khalifa, 1 W. R., 7; nor for culpable homicide (S. 304) and being a member of an unlawful assembly, the homicide having been committed by one of the members—Rubbeeoollah, 7 W. R., 13; nor for rioting armed with a deadly weapon (S. 148) and causing hurt in that rioting—Durzoolla, 9 W. R., 83; nor for theft (S. 379) and mischief (S. 429)—Gunowree Bhooya, 6 W. R., 70; Bichuk Aheer, *Ibid*, 5; Sahrae and others, 8 W. R., 31; (but see *contra* Narayan Krishna, 2 Bom., 416, in which the Bombay High Court held that, as the prisoner had cut down a tree, and then stole it, and that thus the mischief preceded the theft, a double sentence was not illegal); nor for kidnapping (S. 363), kidnapping to compel marriage (S. 366), and keeping in confinement a kidnapped person (S. 368)—6 W. R., 2, C. L.; nor for enticing away a married woman (S. 498) and adultery (S. 497)—5 Mad., xvi, *App.*; Pochun Chung, 2 W. R., 35; nor for abetment of abduction of a woman (Sections 109, 498) and wrongful confinement (S. 343)—Issur Chunder Jogee, Suth. Rep., 1864, p. 21; nor for dacoity (S. 395) or robbery (S. 392) and receiving stolen property (S. 412)—Bhoirub Seal, Suth. Rep., 1864, p. 27; Sheikh Muddon Ali, 1 W. R., 27. So where a per-

Ch. III. — S. 36.

son was convicted of having committed theft of the property of two persons, the acts being simultaneous, a double sentence was held to be illegal.—Sheikh Mooneah, 11 W. R., 38.

A conviction and separate sentences for using criminal force and escaping from lawful custody were also held to be illegal: also of using criminal force and rescuing from lawful custody. Kali Sankar Sandyal and others, 3 B. L. R., 14 Cr. Ca.

A man can, however, be convicted of giving false evidence (S. 193) and of making a false charge, &c. (S. 211), and be sentenced separately for each offence, since it has been held that they are not cognate offences, nor are they parts of one and the same offence.—Abdool Azeez, 7 W. R., 59. Nor are separate sentences illegal for rioting armed with deadly weapons (Sections 148, 149), and stabbing the man on whose premises the riot took place (S. 324), since they are distinct offences.—Kalachand and others, 7 W. R., 60. Both these rulings seem to be opposed to the principles on which the cases above cited have been decided.

When a man at one time criminally intimidates more than one person, and each person brings a separate criminal charge against him, he may, on conviction, be sentenced separately for each offence—Goolzar Khan, 9 W. R., 30.

Similarly, when a person was convicted of having forcibly rescued prisoner from the lawful custody of one Police officer (S. 225) and of having used criminal force to the deter another officer from the discharge of his duty (S. 353), a double sentence was approved.—Assan Shurreef, 13 W. R., 75. When several seals of different persons were found in the possession of the prisoner with the intent to commit forgery, it was held that under S. 473 there was a distinct and separate offence committed with respect to each seal, and that a separate sentence might be passed in each instance unless it appeared that several seals were in the prisoner's possession for the purpose of committing one forgery.—Goluck Chunder, 13 W. R., 16.

Where a person refused to accompany a Police officer who had been directed to produce him, and also resisted his carrying away a pony which he was charged with having misappropriated, it was held that he could be sentenced separately under S. 183 and S. 353, Penal Code—Joy Mohun Chunder, 14 W. R., 19.

A separate sentence cannot be passed for an offence punishable under the Penal Code and also under a special law (the Cattle Trespass Act) for an act punishable under either. Hossein Ali, 5 All. 50; nor for having possession of forged documents (section 474) and also for using them (section 471). Nuzur Ali, 6 All., 39.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

(Ss. 22, 24, 26, 28, 30.)

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

(Ss. 23, 25, 27, 29.)

Control of District Magistrates' investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may by order empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

(S. 43.)

With reference to the last para., see In the matter of the petition of Mahomed Eshak, I. L. R., 6 Cal., 477.

Continuance of powers of officers transferred.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the the local area to which he is so transferred.

(S. 56.)

See In the matter of Pursooram Burrooah, I. L. R., 2 Cal. 117.

The Joint Magistrate of a District was appointed Magistrate of that District, and while holding that office was appointed Magistrate of another District. On being relieved of his office as District Magistrate he tried a part-heard case. Held that by his subsequent appointment to

Ch. III. — Ss. 41, 42.

another District he had, when relieved of the office as District Magistrate, ceased to exercise all powers in that District and could not exercise his former powers as Joint Magistrate. Anand Sarup and others, I. L. R., 3 All. 363, FULL BENCH.

Powers may be cancelled.

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

(S. 54.)

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

(S. 91.)

Chapter IX, Sections 127—133, relates to the dispersion of unlawful assemblies. Under section 91 of the Code of 1872 every person was bound to assist a Magistrate or Police-officer demanding his aid in certain specified contingencies; section 42 of this Code has required such demand to be a "reasonable" demand. The refusal of a person to comply with such a demand on the ground that it was unreasonable might render him subject to prosecution under section 187, Penal Code, for intentional omission to give such assistance, when it would be determined whether the demand was reasonable or otherwise.

Intentional omission to give such assistance is punishable under S. 187, Penal Code, with simple imprisonment for a term which may

extend to six months, or with fine which may extend to five hundred rupees, or with both.

Persons acting on such demand made by a Magistrate or Police officer should be careful to protect themselves by stating the authority under which they act, or if they have authority in writing, by producing such authority if demanded (S. 99, Penal Code, Explanation 2), as otherwise the persons against whom they may act might offer resistance under the plea of the exercise of the right of private defence.

S. 151, Penal Code, declares that "whoever knowingly joins or continues in any assembly of five or more persons, likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of S. 141, the offender will be punished under S. 145,"—that is, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ss. 154, 155, 156, Penal Code, impose certain obligations on owners or occupiers of land on which unlawful assemblies are held, or riots committed, as well as on their agents or managers.

Aid to person other than Police-officer, executing warrant.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

(S. 163.)

The assistance to be thus given to a private person is not as in the case of a Magistrate or Police-officer obligatory, but optional.

Sections 77, 78 provide for the issue of warrants of arrest directed to persons not Police-officers.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

(S. 89.)

Ch. IV.

S. 44.

The offences specified in this section are the following :—

121. Waging or attempting to wage war against the Queen, or abetment of the same.

121*a*. Conspiring to commit certain offences against the State. Act XXVII, 1870.

122. Collecting men, arms, &c., with the intention of waging war against the Queen.

123. Concealment of the existence of a design to wage war against the Queen with intent, &c., to facilitate the same.

124. Assaulting, &c., the Governor-General or certain specified high functionaries of State with intent to compel or restrain the exercise of lawful power.

124*a*. Exciting or attempting to excite disaffection. (Act XXVII, 1870.)

125. Waging or attempting to wage war against any Asiatic power in alliance or at peace with the Queen, or abetment of the same.

126. Committing or making preparation to commit depredations on any Asiatic power as above specified.

130. Aiding escape of State prisoner or prisoner of war, or rescuing, harbouring, &c., such prisoner.

302. Murder.

303. Murder by a life convict.

304. Culpable homicide not amounting to murder.

382. Theft after preparation for causing death, or hurt, &c.

392. Robbery.

393. Attempt to commit robbery.

394. Robbery accompanied with hurt.

395. Dacoity.

396. Dacoity with murder.

397. Robbery or dacoity, with attempt to cause death, or grievous hurt, &c.

398. Attempt to commit robbery or dacoity, being armed with any deadly weapon.

399. Making preparation to commit dacoity.

402. Assembling for the commission of dacoity.

435. Mischief by fire, with intent to damage property to the amount of 100 rupees or upwards.

436. Mischief by fire to a house, &c.

449. House-trespass in order to the commission of an offence punishable with death.

450. House-trespass in order to the commission of an offence punishable with transportation for life.

456. Lurking house-trespass by night, or house-breaking by night.

457. Lurking house-trespass by night, or house-breaking by night, in order to the commission of an offence punishable with imprisonment.

458. Lurking-house trespass by night, or house-breaking by night after preparation made for causing hurt, &c.

459. Grievous hurt whilst committing lurking house-trespass by night, or house-breaking by night.

460. Being jointly concerned in the commission of lurking house-trespass by night, or house-breaking by night, death or grievous hurt being caused or attempted.

S. 154, Penal Code, requires the owner or occupier of land upon which an unlawful assembly (S. 141) is held, or a riot (S 146) is committed, and also any person having or claiming an interest in such land, to give the earliest notice thereof to the principal officer at the nearest Police station, as well as to prevent it, or to disperse or suppress the riot or unlawful assembly under a penalty of fine of 1,000 rupees.

The intentional omission to give information on any subject to any public servant on the part of any person, legally bound so to do, is made punishable by S. 176, Penal Code; and if such information respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, the punishment is enhanced. Under S. 202, if any such person knows, or has reason to believe, that the offence has been committed, he is also made punishable for the omission to give information.

The meaning of the term "offence" in these sections was restricted by S. 40 to "a thing made punishable by the Indian Penal Code;" but Act XXVII of 1870, S. 2, has declared that it shall be construed as including anything made punishable also by any special or local law, when that thing is punishable with imprisonment for a term of six months or upwards, whether with or without fine.

Village-headmen, landholders and others bound to report certain matters

45. Every village-headman, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

Ch. IV.

S. 45.

EXPLANATION.—In this section "village" includes village-lands.

(S. 90.)

Certain portions of this section which professes to reproduce section 90 of the Code of 1872 are new. (1) The Report should be made to the Magistrate or Police-station *whichever* is the nearer. (2) In the concluding portion of (*a*) the words "or is agent" have been added to obviate the difficulty pointed out in Achiraj Lall and another I. L R., 4 Cal., 603, (3) To (*b*) the words escaped "convict or proclamed" offender have been added.

It is not intended that a person, by the mere circumstance of his being the owner or occupier of land anywhere or the agent of such owner or occupier, would be bound to give information of any sudden or unnatural death occurring in a remote part of the country from where the land was owned and held. The mere occupation of the house in which such death took place as a residence is not what was contemplated as imposing an obligation to report. In the matter of Maddoosoodun Chuckerbutty, 23 W. R., 60.

A village accountant does not come within the terms of section 45 so as to make him bound to give the information specified therein. In the matter of Raminihi Nayar, I. L. R., Mad., 266, nor does a Khazanchi. Achiraj Lall and another, I. L. R., 4 Cal , 603 ; or even a Dewan unless his master be absent. *Ibid.*, see also In the matter of Maddoosoodun Chuckerbutty, 23 W. R., 60.

The penalty for neglect to report under S. 45 should not be enforced against one who has omitted to give information to the Police of an offence of which the Police has already obtained information from other sources. Provided that one of several parties bound to give the information does give it, it is not reasonable that any one who may possibly also be bound to give that information should be prosecuted for not having done so. In re Shushi Bhushan Chuckerbutty, I. L. R., 4 Cal., 623.

In order to convict any person for non-performance of the obligation imposed by S. 45, it should appear what the offence is as to commission of which he wilfully omitted to give information ; that the specified offence was committed by some one ; and that he knew of its having been committed.—Ahmed Ali, 22 W. R., 42.

Further obligations are imposed on village headmen, village watchmen and owners or occupiers of land by S. 21, Act XXVII of 1871 (The Criminal Tribes Act), and a failure to fulfil these obligations is by S. 22 made punishable under the first part of S. 176 of the Penal Code. S. 176 of the Penal Code declares that whoever being legally bound to give any notice or to furnish any information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner or at the time required by law shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both ; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

The intentional furnishing of false information by any person bound to give information of this description to a public servant as such is punishable under S. 177.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

The substance of the warrant should be notified to the person to be arrested, and, if so required the warrant should be shown, section 80.

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

(Ss. 177, 178.)

The last para. is new.

Under S. 99, Penal Code, there is no right of private defence against an act which does not cause apprehension of death or grievous hurt, if done by a public servant acting in good faith under colour of his office; provided that a person is not deprived of the right unless he knew or had reason to believe that the person so acting is a public servant; or if acting under the direction of a public servant that unless he has reason to believe that he is acting under such direction or the person states such authority or if he has authority in writing unless he produces it if demanded.

Resistance or obstruction by a person, if it be to his own apprehension, are punishable under section 224, Penal Code; or, if it be to the lawful apprehension of another person, under section 225. Rescue from lawful custody is punishable under section 225.

It will be observed that the law (section 80) requires that, if so required, the person making the arrest shall show the warrant. It has been held in England that if he has not got the warrant and the person offers resistance, the latter cannot be convicted of resisting an officer in the execution of his duty. Codd *v.* Cabe, 1 Ex. D., 352.

Ch. V.

Ss. 47, 48.

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(Ss. 99, 179.)

Warrants of arrest may under sections 77, 78 be directed to persons not Police officers.

Sections 54, 58 provide for arrest by a Police-officer without warrant.

Voluntarily obstructing a Police-officer in the discharge of his public functions is an offence punishable under S. 156, Penal Code; the intentional omission to render assistance under S. 187; the harbouring of an offender under Ss. 202—206; and the intentional resistance or illegal obstruction to the lawful apprehension of any other person for an offence under S. 225.

Persons not authorized to arrest without warrant are nevertheless specially empowered to act under section 47 for the purpose of arresting in any place in British India a person escaping or rescued from lawful custody. See sections 66, 67.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Breaking open zanana.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such

apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(Ss. 100, 180, 181.)

Power to break open doors and windows for purposes of liberation.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

(new.)

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

(S. 182.)

Every Police-officer who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment with or without hard labour, for a period not exceeding three months or to both.—Act V, 1861, S. 29.

Search of arrested persons.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

(S. 387.)

Any seizure of property so made shall be reported forthwith to a Magistrate who is empowered to pass orders regarding it. Section 523.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency. (S. 386.)

Ch. V.

Ss. 53, 54.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

This section is new. It seems to be covered by section 51.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any Police-officer may, without an order from a Magistrate and without a warrant, arrest—

first—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

thirdly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the police in the towns of Calcutta and Bombay.

(S. 92.)

The second clause is new being a re-enactment of a power given under the Regulations in force before the Code of 1861.

Every person is bound to assist a Police-officer, demanding his aid, in making an arrest in any of the contingencies above specified. Section 42 (*a*).

Cl. 3. The proclamation under the Code here referred to would have been made under section 87.

Cl. 4. Section 523 requires a Police-officer forthwith to report the finding of such property to a Magistrate who is empowered to pass proper orders regarding its disposal. The definition of stolen property section 410, Penal Code, as modified by Act VIII of 1882, S. 9, should be applied to this clause.

Cl. 6. Section 549 enables the Governor General in Council to make rules as to the cases in which persons subject to military law shall be tried by a Civil Court or by Court Martial and for the course to be taken by a Magistrate in such case.

Statute 42 and 43 Vic. c. 33 (the Army Discipline and Regulation Act 1879) S. 147 declares that,

"With respect to deserters, the following provisions shall have effect:—

"(1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier, or other person, to apprehend such suspected person, and forthwith to bring him before a Court of summary jurisdiction.

"(2.) Where a person is brought before a Court of summary jurisdiction charged with being a deserter under this Act, such Court may deal with the case in like manner as if such person were brought before the Court charged with an indictable offence, or in Scotland, 'an offence.'

"(3.) The Court if satisfied either by evidence on oath or by the confession of such person that he is a deserter, shall forthwith, as it may seem to the Court most expedient, with regard to his safe custody, cause him either to be delivered into military custody in such manner as the Court may deem most expedient, or until he can be so delivered, to be committed to some prison, police-station or other place, legally provided for the confinement of persons in custody, for such reasonable time as appears to the Court reasonably necessary for the purpose of delivering him into military custody.

"(4.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the Court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the Court shall transmit, if sitting in the United Kingdom, to a Secretary of State, and if in India, to the General or other officer commanding the forces in the military district or station where the Court sits, and if in a colony, to the General or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return), containing such particulars and being in such form as is specified in the Fifth Schedule to this Act, or as may be from time to time directed by a Secretary of State."

In addition to the cases provided for by S. 34 of the Code any Police-officer or village watchman may arrest without a warrant and take before a Magistrate any person registered under Act XXVII of 1871 (The Criminal Tribes Act) who is found in any part of British India beyond the limits prescribed for his residence without such pass as is required, or in a place or at a time not permitted by his pass, or who escapes from a reformatory settlement.

Ch. V.

S. 54.

Whenever any person apparently a European vagrant refuses or fails to comply with any requisition made by a Police-officer under S. 4 of the European Vagrancy Act; whenever any person of European extraction commits an offence under S. 23 in view of a Police-officer; and whenever any Police-officer has reason to believe that such offence has been or is being committed, the person so refusing or failing or offending may be forthwith arrested without warrant by the Police-officer for the purpose of being produced in the usual manner before the officer empowered to deal with the case. (Rules prepared by the Governor General in Council under the European Vagrancy Act. Rule No. III.)

Any Police-officer may also arrest any person committing an offence under the Indian Railways Act (V of 1879) when there is reason to believe that he will abscond or whose name and address are unknown, concealed, or falsely given; but he should be released if he gives sufficient security to appear before a Magistrate, (Act V of 1879, S. 48): also any person committing certain specified offences under the Indian Railways Act (V of 1879), S. 49; also any person going armed and without a license in contravention of the Arms Act. (Act XI of 1873, S. 13).

Act V of 1861, section 34, gives Police-officers power to arrest in the following cases:—

"Any persons who, on any road or in any street or thoroughfare within the limits of any town *to which this section shall be specially extended by the Local Government*, commit any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

"*First.*—Any person who slaughters any cattle, or cleans any carcass; any person who rides or drives any cattle recklessly or furiously; or trains or breaks any horse or other cattle.

"*Second.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

"*Third.*—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such manner as to cause inconvenience or danger to the public.

"*Fourth.*—Any person who exposes any goods for sale.

"*Fifth.*—Any person who throws or lays down any dirt, filth, rubbish, or any stones, or building materials; or who constructs any cow-shed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

"*Sixth.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

"*Seventh.*—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

"*Eighth.*—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure."

The powers of a Local Government under this law have been conferred by the Governor-General in Council on the Chief Commissioners of Oude, the Central Provinces, and British Burmah.—*Gazette of India*, 1867, p. 1409.

Act XV, 1873, section 35, empowers Police-officers in any Municipality in the N. W. PROVINCES and in OUDE, to which that Act has been extended, to exercise the powers given by Act V, 1861, section 34.

Police officers in BENGAL may also arrest in Calcutta or its suburbs or in any place to which Act I (Bengal Council) of 1869 (an Act for the prevention of cruelty to animals) has been extended any person committing in their view any offence under Act—Act III of 1869 (Bengal Council).

In BENGAL any Police-officer may arrest

(1) any person carrying or in possession of contraband salt. Act VII (Bengal Council) of 1864, S. 24;

(2) any native officer or Sepoy, except Subadars, Jamadars and Serangs, wearing their uniform coats when not employed on the public service, Reg. (Bengal) XX of 1817, S. 30;

and, if so empowered by the Local Government,

any person in possession of an unlicensed still or any excisable article liable to confiscation or engaged in the unlawful manufacture or sale of such excisable articles. Act VII (Bengal Council) 1878, Ss. 41, 39; also,

the occupier of the house, boat or place, and all other persons concerned in the manufacture of such excisable articles or in the keeping or concealing of the same provided that an officer not below the grade of head constable of Police be present. Act VII (Bengal Council) 1878, Ss. 41, 40.

In CALCUTTA the Deputy Commissioner of Police is empowered to select Police-officers to exercise these powers under Act VII, 1878 (S 42,) and in the town and suburbs of Calcutta or in Howrah any Police-officer above the rank of constable may arrest the owner or occupier of the premises of a chemist, druggist, apothecary, or keeper of a Dispensary who allows any spirituous or medicated liquor, not *bonâ fide* medicated, to be drunk on his business premises between sunset and sunrise by any person not employed in that business. S. 43.

In MADRAS, any Police-officer may take any person in possession of or carrying in any public street, thoroughfare, or place, or in any open shop any liquor requiring a pass and for which no valid pass is produced. Act III (Madras Council) 1864, S. 26. See also Act V (Madras Council) 1879, S. 4, cl. viii, ix.

An officer in charge of a Police-station in the presence of another Police-officer may between sunrise and sunset break into any house, boat or place believed to be used for the manufacture or concealment of contraband salt, if the delay in obtaining a warrant from a Magistrate will prevent such discovery and arrest all persons concerned in the manufacture, keeping or concealing of the salt. Act V, (Madras Council) 1871, S. 17.

In BENGAL, the NORTH-WESTERN PROVINCES, OUDH and ASSAM, in which Act I of 1882 (the Inland Emigration Act) is in force, the Police are required to take charge of a labourer who has deserted from his employer's service and been arrested by such employer, and to take him to the nearest Magistrate. S. 172.

Ch. V.

S. 54.

In a case in which it was held that the Police had abused their powers of arrest, the Calcutta High Court made the following remarks :—

"What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested, and not on mere vague surmise or information. Still less have the Police power to arrest persons, as they appear sometimes to do, merely on the chance of something being proved hereafter against them. Any wilful excess by a Police-officer of his legal powers of arrest is, by S. 220 of the Penal Code, an offence punishable by imprisonment for seven years."—Behari Singh and others, 7 W. R., 3.

But proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to support a conviction of a Police officer under S. 220 of the Indian Penal Code.—Narayan Babaji, 9 Bomb., 346.

The following remarks of the Calcutta High Court, in the case of Behari Singh (7 W. R., 3) already cited, are deserving of attention in this place :—

"If, as is frequently the case, a Police officer, without arresting a person himself, directs some of the neighbours to take charge of him, the Police officer is responsible in the same way as if he had himself made the arrest, the person arrested by his order being in law in his custody.

"Even if a person be rightly arrested it does not rest with the discretion of the Police officer to keep the prisoner in custody where, and as long as, he pleases. Under no circumstances can he be detained without the special order of a Magistrate more than twenty-four hours; at the expiration of twenty-four hours, unless the special order has been obtained, the prisoner *must* either be discharged or sent in to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place, as the time of confinement, still we think it is perfectly clear that it was intended that where a Police officer has arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the Police station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the inquiry."

A Police officer detained a person while he consulted his superior officer whether he should take a recognizance. On being prosecuted by the person so detained, it was held that the confinement was without any justifiable ground, but, inasmuch as there was proof that the Police officer acted *bonâ fide*, though he might have exceeded the limits of his authority, the High Court found that facts did not amount to the criminal offence of wrongful restraint, for there was no malice, no intention of doing any act of the nature spoken of in S. 339 or S. 340, and no voluntary obstruction or restraint which would render the Police officer liable to penal consequences.—Budrool Hosein, 24 W. R., 51.

A village chowkeedar is not a Police officer within the terms of S. 54 of this Code. He is therefore not liable under S. 271, Penal Code, on refusal to arrest out of his jurisdiction a person charged with murder. Kallu and others, I. L. R., 3 All., 60.

Early intimation of the arrest by the Police of any soldier, European or Native, should be given by the District Magistrate to the Officer commanding the regiment to which the man arrested may belong so as to enable any necessary measures to be taken for the defence.—Govt. of Bengal Cir. 88, Aug. 10, 1874. A similar order is, it is believed, in force throughout British India.

A deserter from Her Majesty's army when arrested by a Police officer should be brought without delay before the nearest Magistrate, or the nearest Military Commander, when no Magistrate is readily accessible. Act V of 1869, Part III (*d*).

Magistrates in the capacity of Justices of the Peace are required by S. 34 of the Mutiny Act to transmit to the nearest General or other Officer commanding a Descriptive Roll in a prescribed form to the end that such person may be removed by order of such officer and proceeded against according to law. The deserter should be forthwith conveyed to some public prison if the regiment or corps to which he is suspected to belong is not in India, but if the regiment or corps be in India, the Magistrate may deliver him into custody of the nearest military post, if within reasonable distance, although the regiment to which such person is suspected to belong may not be stationed at such military post. See Govt. Bengal Cir. 111, dated Sept. 12, 1873; see also Smyth, p. 145.

Arrest of vagabonds, habitual robbers, &c.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(S. 94.)

The above powers of arrest can without a warrant be exercised only by an officer in charge of a Police-station, but such officer can under S. 56 authorize any subordinate officer to make any particular arrest by an order in writing.

An arrest should be at once reported, and the necessary evidence in proof of the circumstances under which it was made, should be sent in to a Magistrate whose proceedings will be regulated by Ss. 109, 110.

Ch. V.

S. 55.

Every Daroga or District Police officer is required to apprehend and send to the Magistrate persons found wandering at large within the district who are deemed to be lunatics and all persons believed to be dangerous by reason of lunacy.—Act XXXVI, 1858. S. 4.

The proper use of a Budmashi Register was discussed in the case of Baboo Lall and Duttee Lall *v.* Lieutenant N. M. T. Horsford, District Superintendent of Police, and Narain Singh Katwal, of Allahabad :—

"We think it proper to state in this place the opinion which is entertained by us, and we believe we may say also by the other learned Judges of the Court, with respect to the legitimate use which may be made by the Police of Register No. 10, which is more generally known as the Budmash List. For the protection of the public, it has been found necessary in every civilized State to constitute certain persons, officers for the prevention and detection of crime, and to render them efficient, it has also been found necessary to confer on them powers of interfering with the liberties of their fellow-citizens, which, if exercised by private persons, would render them liable to civil proceedings. It is necessary for the efficiency of the Police that they should possess information of the names of persons who are likely to commit offences, and inasmuch as changes must of necessity constantly take place in the members who constitute the Police Force, it is also necessary that the information above mentioned should be preserved. To effect this, registers are ordinarily kept, showing the names of persons who have committed, or who, on strong grounds, are suspected of the commission of, offences. Such a register accurately compiled and strictly reserved for the purpose for which it is designed, the private use of the Police, may be of great advantage to the public in enabling the Police to perform their duties effectively. But if this register be a public register, or if the persons having the custody of it, allow its contents to be matter of public conversation, we can imagine no greater engine of injustice and oppression.

"The matter recorded is not confined to facts which have been ascertained by fair and open investigation in Courts of Justice. It does, and necessarily must in a great measure, consist of the results of *ex parte* investigations made in private by the Police. It is, and necessarily must be, in great part, the fruit of rumour and suspicion, and sometimes it may be of malice. Were it permitted that such a register should be kept as a register to which the public might have access, or of which the entries were bruited about, the characters of honest men might be blasted, without redress, through the instrumentality of any enemy who could gain the ear or excite the suspicions of the Police. Very shortly after the establishment of this Court, the abuse of this register was on more than one occasion prominently brought to its notice. It had at that time (and we fear the evil has not even yet been cured) come to be regarded as a public register, and Magistrates not unfrequently passed orders, directing the entry of a person's name as a kind of punishment. The Court, on the 9th August 1866, addressed the Government of these Provinces on the subject, and pointed out the probabilities and magnitude of the evils of which we have above made mention, and the Government promptly passed an order that entries should only be made by the District Superintendent or the Magistrate in his capacity of Superintendent of Police, and

directed that the register should be considered a private register, and should only be open to inspection by officers of Police. In the present case, had the orders of Government been obeyed in spirit as well as in letter, although the plaintiffs might have been unjustly recorded, they would not have been greatly damnified; but no sooner was the entry made than it became known that it had been made."

Procedure when Police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

(S. 102, para. 1.)

If the offence is a cognizable offence an arrest can be made by any Police-officer on his own responsibility, and without any warrant or order in writing S. 54, cl. (*i*): a warrant of arrest may be endorsed by one Police-officer for service by another (S. 80); but an order in writing under S. 56 is apparently personal.

Refusal to give name and residence.

57. When any person in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

(S. 93.)

No Police officer can without special order from a Magistrate of the 1st or 2nd class investigate a non-cognizable offence, but, on complaint made of such an offence to an officer in charge of a Police-station, an entry of its substance should be made in the complaint book, and the complainant referred to the Magistrate. S. 155.

Pursuit of offenders into other jurisdictions.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest

under this chapter, pursue such person into any place in British India.

(S. 103.)

This section goes beyond the corresponding section (103) of the repealed Code of 1872 which gave this power of pursuit and arrest of any person accused of a cognizable offence. This power can now be exercised in any case in which the power to arrest without a warrant is conferred on a Police officer. See Ss. 54, 55.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

(Ss. 105, 107.)

No person who has been arrested by Police-officer shall be discharged except on his own bond, or on bail, or under special order of a Magistrate. S. 63.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

(S. 101.)

See note to S. 80 *post* for the orders of the Government of India regarding the arrest of Railway servants.

Person arrested not to be detained more than 24 hours.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

(S. 124, para. 1.)

The course to be taken by the Police officer is thus prescribed by S. 167 :—

Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

Before a Magistrate can grant a remand under section 167, the accused must have been brought before him.—Shera, 2 Panj. Rec., 72. A remand to Police custody ought only to be granted in cases of real necessity, and when there is good reason to believe that the accused can point out property or do any thing that will assist in elucidating the case.—Panj. C. Ct. Cir. ix, March 15, 1868. The twenty-four hours during which the Village Police may detain an accused person under Act (Bombay) VIII, 1867, are not to be included in the time allowed to the District Police-officers by this Code.—Bom. H. Ct. Cir., 1260., 1869 ; *Resn. in Chambers.*

As to what constitutes a detention by the Police, the Calcutta High Court in the case of Behari Singh and others (7 W. R., 4), held that, if, as is frequently the case, a Police-officer, without arresting a person himself, directs some of the neighbours to take charge of him, he is responsible in the same way as if he had himself made the arrest, the person arrested being in law in his custody In the case of Puran Kusam Narasaya Pantulu (2 Madras, 396), the Madras High Court held that the requiring of the attendance of a certain person by letter, and the deputing of two constables to accompany him, under the allegation that their duties were to prevent him from speaking to any one, amount to an arrest and imprisonment.

In the appeal of a Police-officer convicted of wrongful confinement (S. 340, Penal Code), the Calcutta High Court held that a Police-officer is not empowered to detain without question an accused person for a period not exceeding twenty-four hours, but rather he is in no case justified in detaining a person for one single hour, except on some reasonable grounds warranted by the circumstances of the case. The time during which a person is wrongfully confined by a Police officer is material only in fixing the punishment for the offence.—Sheoprosunno Ghosal, 6 W. R., 88 In another case, in which the Police officer had been punished under S. 29, Act V of 1861, for having detained an accused person more than twenty-four hours, the Calcutta High Court

Ch. V.

S. 62.

held that, as the detention was not continuous, the Police officer had committed no offence.—Indrobee Shaha, 1 W. R., 5.

Under no circumstances can an accused person be detained for more than twenty-four hours without the special order of a Magistrate; and, unless that special order be obtained, he *must*, at the expiration of that period, be either sent in to the Magistrate, or be discharged, any further detention being unlawful. As to the place of confinement, the Court remarked that, though the Code was not so express on this point as on the duration of the confinement, it was perfectly clear that it was intended that, when a Police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but he should be sent immediately to the Police station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the law with the conduct of the inquiry.—Behari Singh and others, 7 W. R., 3.

Every prisoner must be forwarded from a Police station direct to the nearest Magistrate having jurisdiction, and must not be sent to the next superior officer of Police.—Bengal Govt. Resolution, dated 22nd Sept., 1862, para. 12.

In all heinous cases, when a single prisoner is sent in, he should be handcuffed; when two or more prisoners are sent, they should be handcuffed to each other, two and two. In cases not of a heinous nature, prisoners should not be handcuffed, unless violent, and then only by order of the officer in charge of the station not below the rank of Sub-Inspector.—Ben. Pol. Cir, 27, 1863.

A Magistrate is prohibited by S. 167 from remanding an accused person during the course of an inquiry or trial of warrant case (Chapters XV and XVII) for a period exceeding fifteen days, and this has been applied by the Bombay High Court as the limit of a Magistrate's power to authorize detention by the Police.—Surkya Valad Dhakn, 5 Bom., 31, *Crown Cases.*

Police to report apprehensions.

62. Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

(S. 132, para. 1.)

The object of this section is that the judicial bench should promptly exercise authority, if necessary, with regard to all arrests by the Police; and it seems to have been framed with this view that, as no person can be released without the order of a Magistrate except on bail or recognizance, it shall be the Magistrate's responsibility as well as that of the Police if a person illegally arrested remains unnecessarily in custody.—Panj. C. Ct. Cir. x, May 26, 1869; Smyth, p. 84.

Discharge of person apprehended.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

(S. 132, para. 2.)

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(S. 108.)

"Within the local limits of his jurisdiction." Under S. 12 unless the jurisdiction of a Magistrate be specially restricted by the Local Government, or, subject to its control, by the District Magistrate, the jurisdiction and powers of every Magistrate extend throughout the District.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

(S. 166, para. 2.)

Power, on escape, to pursue and retake

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

This is a re-enactment of a portion of S. 112 of the repealed Code (Act XXV) of 1861.

A general power of arrest is conferred by S. 54 (cl. v).

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

This is also a re-enactment of a portion of S. 112 of the repealed Code (Act XXV) of 1861.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Summons by whom served.

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay.

(Ss. 152, 153.)

For the Form of summons see Sch. V, No. 1.

Every summons should be signed in full by the Magistrate by whom it is issued, with the name of his office or the capacity in which he acts. The practice of signing initials only, or of using a stamp, is objectionable, and must cease.—Smyth, p. 90. A summons should contain the name of the father of the person summoned, the caste or tribe to which he belongs, and his residence, so as to place his identity beyond doubt.—*Ibid*, p. 92.

A summons should state the place at which the person should attend. Mad. H. Ct., Pro. Nov. 30, 1874. Weir, 170.

One copy of the summons will ordinarily be left with the accused person, the other will probably be filed with the record, together with the return of the serving officer

The Commanding officer of a Cantonment may send any process requiring service or execution by any means not immediately at his disposal to the Chief Police-officer in the Cantonment for service or execution through the Cantonment Police, and the said Police-officer shall serve or execute such process in the same manner as if it had been executed by the Cantonment Magistrate, and subject to the same rules. Act III, 1880, S. 11.

In BENGAL and ASSAM under the Court Fees Act, in non-cognizable cases, *eight annas* has been fixed as the fee for a summons in respect of one person, or of the first two persons residing in the same place, and *four annas* in respect of every additional person named therein. (*Cal. Gaz.*, 1879, p. 305; *Assam Gaz.*, 1879, p. 596.) The process is one whether one or more persons be named therein, and whether such persons reside in one place or not, but an additional fee of four annas is chargeable in respect of every additional person not being the second person of more than two residing in the same village

named in the summons: thus if the summons include one person residing in village A, and a second person residing in village B, the additional fee is chargeable in respect of such second person.—Cal. H. Ct., Cir. 13, May 12, 1874. In MADRAS the same rates are charged for a summons as in BENGAL and ASSAM except that, for a summons on every additional defendant or witness if applied for at the same time and if resident in the neighbourhood, an additional fee of *four annas* is charged; only half these rates are chargeable if the process is to be served within a radius of six miles from the Court-house, the villages within such radius to be determined by the Judge of each Court, and to be notified in a conspicuous place in the Court-house. *Mad. Gaz.*, Aug. 1873, p. 1255. Power is given to a Magistrate to excuse indigent persons who may be unable to pay the prescribed fees.—*Mad.* H. Ct. *Pro.* Sept. 10, 1873. 9 *Mad. Jur.*, 30.

In certain districts in Bengal and Assam, in every case in which a process has to be executed at a distance of more than 25 miles from the Court from which it is issued, an additional fee of one-fourth is chargeable; and if more than 50 miles, the fee is increased by one-half.

BENGAL.

Rajshahye.	Beerbhoom.
Bogra.	Chittagong.
Dinagepore.	Noakhally.
Malda.	Singbhoom.
Rungpore.	Lohardugga.
Bancoora.	Maunbhoom.
Hazareebagh.	

ASSAM.

Sylhet.	Cachar.
Nowgong.	

Further, in certain Distr

portion of the year travelling except by boat is impracticable, boat-hire may, when it has to be incurred, be charged in addition to other fees. The rate of such boat-hire shall be fixed from time to time by the District Magistrate, (subject to approval by the Sessions Judge in Districts of Assam) and shall be sufficient only to cover on the whole the actual cost of such boat establishment as it may be necessary to maintain for the purpose of serving processes in cases not cognizable by the Police. *Cal. Gaz.*, 1879, p. 305; *Assam Gaz.*, 1879, p. 596. Wilkins, 84.

BENGAL.

Jessore.	Backergunj.
Pubna.	Mymensingh.
Dacca.	Tipperrah.
Furreedpore.	Noacolly.

ASSAM.

Sylhet.	Nowgong.
Kamroop.	Lukhimpore.

In BOMBAY the fee chargeable on a summons in a case under Chapters XIX, XX, XXI of the Penal Code is *four annas*, and *one anna* in every other non-cognizable case, and it is only in this latter case that the Magistrate may remit the fee on being satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874., p. 580.

In BRITISH BURMAH, in non-cognizable cases, a fee of *eight annas* is chargeable on a summons on a witness, and *one rupee* on a summons on an accused person; no further charge is to be made for boat-hire; a Magistrate who has power to entertain cases on complaint preferred directly to himself, can, on special grounds, to be recorded, remit the fee on any process issuing from his Court. No fee is chargeable on any process issued by a Criminal Court of its own motion.—*Gaz.*, 1873, Part II, p. 183.

Summons how served.

69. The summons shall if practicable be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(S. 154.)

The refusal to give a receipt for a summons is not an offence under S. 173, Penal Code. In the matter of Bhobaneshwar Dutt, 2 Cal. L. R., 80: Kalya bin Fakir, 5 Bomb., 64 *Cr. Ca.*

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(S. 154.)

S. 72 provides for the service of summons on a person in the service of the Government, or a Railway Company.

The mere showing of a summons is not sufficient service. Either the original should be left or exhibited, or a copy delivered or tendered. Karsandal Danatram, 5 Bomb., 20 *Cv. Ca.*

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

(S. 155.)

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which

such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

(S. 158 Proviso.)

The corresponding section of the repealed Code of 1872 made it optional with the Magistrate to make such special service. The present law declares that it shall be the ordinary mode of service in such cases.

Service should be made through the local head of the office; thus, in the case of a Police-officer, summons should be served through the District Superintendent, or the Assistant District Superintendent in charge of the Subdivision to which the officer may belong. Cal. H. Ct. Cir. 14, Dec. 6, 1866. Wilkins, 98: and in the case of a medical subordinate at a Subdivision, through the Magistrate or other executive head of the District in order to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of the medical duties. Cal. H. Ct. Cir. 1, Jan. 1, 1868. Wilkins, 98. Whenever it may be necessary to summon an Officer or Soldier in Military employ, the summons should be sent under cover to the officer in command of the Regiment or detachment with an application for his assistance to serve it. Cal. H. Ct. Cir. 24, June 24, 1878. Wilkins, 98.

See note to S. 80 for the orders of Government of India, regarding the arrest of Railway servants.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

(Act XXIII, 1840, S. 1; Act IV, 1877, S. 50.)

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Ch. VI.
S. 75.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

(Act IV, 1877, S. 51.)

B.—Warrant of Arrest.

Form of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

(S. 159.)

See Sch. V, No. 2 for the form of a warrant of arrest.

Under the Court Fees Act, in non-cognizable cases, the following fees are chargeable on warrants:—in BENGAL and ASSAM, *one rupee* in respect of the arrest of one person (*Cal. Gaz.*, 1879, p. 305: *Assam Gaz.*, 1879, p. 596, Wilkins, 81:), and an additional fee of *four annas* is chargeable in respect of any person exceeding one named in a warrant (Cal. H. Ct. Cir. 13, May 12, 1874); in MADRAS, *twelve annas* (*Gaz.*, August 5, 1873, p. 1255); but only half rates are chargeable in Madras if the process it to be executed within a radius of six miles from the Court-house; and it has further been ordered that, if the warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee of the same rate shall be levied for every fifteen days or portion of fifteen days until return is made, provided that such delay is not attributable to the officer of the Court. Magistrates may forego the collection of fees for the service of processes in non-cognizable cases, where the parties are unable to pay them.—Mad. Govt. Pro., Sept. 10, 1873, 9 Mad. Jur, 30. See note to S. 152, for the additional rates chargeable in certain districts and under certain circumstances in Bengal.

In BRITISH BURMAH the fee chargeable on a warrant of arrest in a non-cognizable case is *two Rupees*, the Magistrate having the power to remit the fee in any case for special reasons to be accorded.—*Gaz.*, Sept. 27, 1873, p. 183.

In BOMBAY the fee chargeable on a warrant of arrest in a case under Chapters XIX, XX or XXI, Penal Code, is *one rupee* and in every other non-cognizable case *four annas;* in the last mentioned cases only, the Magistrate may remit the fee if he is satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, p. 580.

Warrants issuing out of a Magistrate's Court should be written "in the language in ordinary use in the District in which it is held," that is to say (with certain exceptions) the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for

execution to the Magistrate of a District in which a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting officer to be correct, into such other language or into English. In such cases it would also be proper that the warrant should always be accompanied by a letter in English requesting its execution.—Cal. H. Ct. Cir. 3, July 25, 1872.

Warrants should be signed with the full name and office of the Magistrate. Initials are no proper signature. Signature by stamp is prohibited.—Panj. C. Ct. Cir. 20, 1869.

The following observations were made by Sargent, *J.* (*In re* James Hastings, 9 Bom., 157), as to the necessity for sealing a warrant to ensure its validity, and certain particulars which should be specified therein :—

"Having regard to the opinion that has been generally entertained by the Judges in England that a seal was necessary at common law to the validity of a warrant, and that it is expressly provided by the Code of Criminal Procedure that a warrant shall be sealed, I should hesitate much before coming to the conclusion that a seal is not essential to the validity of a warrant issued under the Code. The reason for requiring a seal seems to be that the attaching of a seal shows that the instrument to which it is attached has not been issued without due deliberation, as well of course as to prove the authenticity of the instrument."

"I think I am bound to follow the principle involved in the ruling of the Courts of England in *Hood's* case (1 Mood, Cr. Cas. 281), which is that a warrant shall contain a distinct and unequivocal intimation to the person that he is the individual in Court to be apprehended, and must surrender to the officers, and this too the more especially as the form of warrant provided in the Code requires that his residence should be inserted. The issuing of general warrants is, it is well known, illegal, and this though not, properly speaking, a general warrant which means a warrant to apprehend all persons committing a particular offence or class of offences, is however of such a general nature as to justify the Police in arresting any person of the name of James Hastings whoever he may be, or wherever he may be found, the number of persons to be arrested under it being limited only by the limit to the number of persons bearing that name. The warrant in this case is, in my opinion, far more general than was the warrant in *Hood's* case, and I am therefore of opinion that it is bad."

The place where the Magistrate signs the warrant should appear on the face of it.—*Ib.*, p. 160.

So in the Punjab it has been ordered that in all warrants and processes of every description, the father's name, the caste or tribe and the residence of the person to be arrested or summoned should be entered so as to place his identity beyond doubt. The warrant should also set forth the Court from which it issues and the name of the District.—Smyth, p. 92.

Where it appeared that there was no sufficient evidence of the commission of an offence, since the criminal acts charged did not amount to an offence, without a certain specified intention, and that intention was not entered in the warrant, it was held that the warrant was bad and should be set aside —Biddumukee Debee, 6 B. L. R., 129, *App.*

If the warrant be issued for the arrest of a European British subject

by a Magistrate who is not competent to inquire into or try the case, it should be made returnable before a Magistrate who is competent to do so. See S. 445.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

(S. 160.)

Security may be provided by depositing a sum of money or Government Promissory Notes to the amount specified in the warrant. S. 513.

S. 170 provides for the taking of security by a Police-officer from an accused person for his appearance before a Magistrate whenever on investigation their appears to be reasonable ground of suspicion or sufficient evidence that he has committed a cognizable offence. S. 92 provides for the issue of a warrant of arrest if the person bound over to attend does not appear. Proceedings may also to taken to forfeit the bond. S. 514.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrants to whom directed.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant to several persons.

(S. 161.)

S. 79 enables a Police-officer to whom a warrant is directed to endorse it for execution by another Police-officer.

Warrants should be directed to the senior officer of Police in attendance at a Court, by whom they should be registered in a book kept for that purpose. He should then endorse on such warrant the name of the officer who is charged with its execution (generally the officer in charge of the Police Station), and should despatch it without delay. The officer receiving the warrant may again transfer it for execution to another Police-officer, but in every instance a regular endorsement must take place, so that the name of the officer executing the process may be apparent on the order.—Beng. Pol. Cir. 20, 1862; 12, 1864.

The Commanding officer of any Cantonment can send any process requiring service or execution by means not immediately within his power to the chief Police officer who is directed to act as if it had issued from the Cantonment Magistrate. Act III, 1880, S. 11.

Warrant may be directed to landholders, &c.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

(S. 162.)

"Proclaimed offender." S. 87 provides for the issue and publication of a proclamation for the appearance of any person against whom a warrant of arrest has been executed but cannot be executed. S. 54, Cl. ii, contemplates also a similar proclamation by order of the Local Government

The wilful neglect by a landholder or other person mentioned in S. 78 to execute a warrant directed to him, would be punishable under the latter part of S. 187, Penal Code, with simple imprisonment for six months, or fine of five hundred Rupees, or both.

Warrant directed to Police-officer.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is en-

dorsed upon the warrant by the officer to whom it is directed or endorsed.

(S. 165.)

Notification of substance of warrant.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

(S. 176.)

Arrest is made by actually touching or confining the body of the person to be arrested, unless there be submission to custody by word or action. S. 46. The person making any arrest should have the warrant in his possession at the time of arrest, for if he has not got it, and the person to be arrested offers resistance, he cannot be convicted of resisting an officer in the execution of his duty. Codd *v.* Cabe, 1 Ex. D., 352.

The Government of India Regulation 206—3, June 20, 1877 has applied the terms of S. 72 *ante* to the execution of warrants for the arrest of a Railway servant. Such warrants should be directed to a Police-officer of a superior grade, who shall, if he finds on proceeding to execute it that the immediate arrest of the Railway servant would occasion risk and inconvenience to the public, make arrangements to prevent escape and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved. The Government orders were circulated by Bengal Pol. Cir., July 27, 1877.

Person arrested to be brought before Court without delay.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

(S. 183.)

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

(S. 167.)

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

(Ss. 168, 170.)

In BOMBAY District Superintendents and Assistant District Superintendents of Police have been empowered to act under this section. *Gaz.* 1873, p. 439.

Warrant directed to Police-officer for execution outside jurisdiction.

84. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

(Ss. 168, 170.)

In BOMBAY District Superintendents and Assistant District Superintendents of Police have been empowered to act under this section. *Gaz.* 1873, p. 439.

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within

the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

(S. 169.)

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

(S. 170.)

In BOMBAY District Superintendents and Assistant District Superintendents of Police have been empowered to act under this section. *Gaz.* 1875, p. 439.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

BENGAL SECRETARIAT LIBRARY.

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(Ss. 171, 353.)

See Sch. V, No. 4 for the form of proclamation for the appearance of a person accused, and No. 5 for the attendance of a witness.

In BOMBAY the fee for a proclamation is *one Rupee*, in cases falling under Chapters XIX, XX, XXI of the Penal Code, and in all other non-cognizable cases *four annas*. In the last-mentioned cases only the Magistrate may remit the fee if he is satisfied that the complainant has not the means of paying it.—*Gaz.*, 1874, p. 580.

In BENGAL and ASSAM the fee for proclamation for an absconding party has been fixed at two Rupees: and for a witness at eight annas. *Cal. Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596. Wilkins, 81. If after proclamation an absent witness shall appear, and the Court shall be of opinion that such witness absconded or concealed himself for the purpose of avoiding the service of the warrant on him, such Court may order the witness to pay the costs of the proclamation.—*Ibid.*

In BRITISH BURMAH *one Rupee* has been fixed as the fee chargeable on a proclamation issued in a non-cognizable case, the Magistrate having the power to remit the fee for special reasons to be recorded.—*Gaz.*, 1873, p. 197.

In BENGAL and ASSAM a fee of *one Rupee* is chargeable on a warrant of attachment, and when it is necessary to place officers in charge of property attached *four annas* per diem is chargeable for each officer so employed.—*Cal. Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596. Wilkins, p. 81.

If an accused person, against whom a warrant and proclamation have been issued, appears within the term specified in the proclamation, he is not liable to punishment under S. 172, Penal Code: but if he neglects to attend on the proclamation, he is liable to punishment under S. 174.—Omesh Chunder Bose, 5 W. R., 71.

The Magistrate of the District can under S. 78 direct a warrant or warrants to landholders, &c. for the arrest of any proclaimed offender, or person who has been accused of a non-bailable offence and who has eluded pursuit.

In BENGAL rewards for the apprehension of offenders may be offered at the following rates—by a District Superintendent of Police, up to Rs. 50: by the Inspector-General of Police, up to Rs. 500: by the District Magistrate, up to Rs. 200; by Commissioners up to Rs. 500. See Bengal Pol. Cir., Jan. 8, 1861: Cir. June 3, 1878.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Ch. VI.
S. 88.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

(Ss. 172, 353.)

See Sch. V, Form 6 for the form of orders of attachment.

The same fee is chargeable in BOMBAY on an attachment as on a proclamation.

In BENGAL and ASSAM one Rupee is charged for a warrant of attachment, and where it is necessary to place officers in charge of property attached, a daily fee of four annas is charged for each officer so employed. *Cal. Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596. Wilkins, 81.

If the property under attachment be a revenue paying estate the sale will be held by the Collector. Bengal Rev. Bd. Cir. No. 9, July 1878: Cal. H. Ct. Cir. No. 7, Aug. 17, 1878: Wilkins, 99.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88 appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

(Ss. 173, 354.)

A person whose application under S. 89 for the delivery of property or the proceeds of the sale thereof have been rejected has the right of appeal to the Court to which an appeal ordinarily lies. S. 405.

The maximum fine which may be imposed on an absconding witness is 1,000 rupees (S. 172, Penal Code), but regard must be had to the powers of the Magistrate passing the order.

A Magistrate fined a witness who failed to appear after proclamation and attachment of his property. The Sessions Judge, on appeal, reversed the order, on the ground that the appellant's answer to the charge should have been recorded, and that, not being so recorded, the fine was illegal. The Calcutta High Court declared that the Judge had taken a mistaken view of the law, for taking a witness's answer supposes that the man has made his appearance, whereas, as in the present case, if he did not come in, and his defence could not be recorded, he would escape punishment.—Rhedoy Nath Biswas, 2 W. R., 45.

The Magistrate should be most careful not to interfere with or disturb the possession of third persons; he has no authority to order the attachment of any property unless it belongs to the party absconding. The claimants are not barred by the sale, and may bring a suit in

Ch. VI. — S. 90.

the Civil Court against the purchasers to establish their rights. When claimants have held back for six months, a Magistrate possibly may be justified in presuming that the property was not theirs, leaving them to vindicate any right that they may have in the Civil Court. He may fairly say that he is not bound to try a question which is more properly one for the Civil Court.—Chamroo Roy, 7 W. R., 35; Chunder Bhon Singh, 17 W. R., 10.

If the proceedings have been regularly conducted, a suit on the part of the absconding party will not lie.—Bakhowree Singh, 8 W. R., 207, *Civil cases.*

On his surrender he must be asked whether he absconded or concealed himself. Where the Magistrate failed to do this, the proceedings and sale were quashed as irregular —Sheodyal Singh, 6 W. R., 79. It is for the accused person to show that he has not been evading justice. As he did not attempt to do so, the Magistrate was competent to declare his property to be at the disposal of Government, notwithstanding that through mistake or inadvertence such an order had not been passed, before his appearance within the six months specified in S. 88.—Bissonath Sircar, 3 W. R., 63.

D.—Other rules regarding processes.

Issue of warrant in lieu of or in addition to summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

(S. 148, para. 2; Ss. 150, 156, 352, 355, 494, para. 1.)

Sch. V, No. 7 contains a form of warrant to be used under S. 90.

No fees are chargeable when the process is issued by a Court of its own motion solely for the purpose of taking cognizance of and punishing any act done, or words spoken, in contempt of its authority. Wilkins, 87.

Great care should be taken that a warrant which always implies personal arrest and restraint never goes forth when a summons would be sufficient for the ends of justice. Smyth, p. 92. Witnesses arrested under a warrant and brought before a Magistrate should not be treated as criminals, and put into irons; they should be simply treated as

persons arrested on civil proces. Cal. H. Ct. Cir. 21, Nov. 22, 1864: Agra Sud. Ct. Cir. 3, 1865: Jud. Com. Panjab Cir. 2, 1865.

When the serving officer is present at the day of trial, his statement will be duly recorded regarding service of summons, but if he is not present, or if the summons has been served outside the local limits of the Court's jurisdiction, an affidavit purporting to be made before a Magistrate that such summons has been duly served, and a duplicate of the summons purporting to be endorsed by the person to whom it is delivered or tendered shall be admissible in evidence. S. 74.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

(S. 208, para. 2.)

Proceedings can also be taken under S. 514 for enforcing the penalty of the bond.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

(S. 158, para. 1; S. 185.)

No fee shall be levied for any summons to attend as a juror or assessor in a Court of Session. *Cal. Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596. Wilkins, 81.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

(Ss. 164, 365.)

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless or until he is called as a witness. Evidence Act (I, 1872), S. 139.

Ss. 123, 124 of the Indian Evidence Act 1872, relate to evidence derived from unpublished official records relating to affairs of State, and to communications made to a public officer in official confidence.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of

any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

(S. 369.)

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

(Ss. 336, 368, 369.)

If any person not being duly empowered on that behalf issues a search-warrant for a letter in the Post Office or a telegram in the Telegraph Department his proceedings are void (S. 530), that is to say, his orders will receive no attention.

The provisions of Ss. 43, 75, 77, 79, 82, 83, 84 shall, so far as may be, apply to all search-warrants issued under this section. S. 101.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(S. 398, para. 2.)

Sch. V, No. 8 contains a form of warrant to search after information of a particular offence.

Search of house suspected to contain stolen property, forged documents, &c.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeit coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

(S. 377.)

Sch. V, No. 9 contains a form of warrant under S. 98.

The provisions of Ss. 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under this section. S. 101. Many of the expressions in S. 98 have special definitions in the Penal Code which apply equally to this Code.

STOLEN PROPERTY is thus defined in S. 410, Penal Code. Property, the possession whereof has been transferred by theft, or by extortion or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed is designated "Stolen property." But if such property subsequently comes into the possession legally entitled to possession thereof, it ceases to be stolen property. See Act VIII of 1882.

"Theft," "extortion," "robbery," "criminal misappropriation," "criminal breach of trust" are also defined respectively in Ss. 378, 383, 390, 403, 405 of the Penal Code.

A FORGED DOCUMENT is a document made wholly or in part by forgery, S. 470, Penal Code, and S. 463 declares that whoever makes any false document or part of a document with intent to cause damage or injury to the public or any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. "Making a false document" is defined by S. 464: "document" by S. 29; "public" by S. 12: "person" by S. 11: "injury" by S. 44, Penal Code.

COUNTERFEIT. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception or knowing it to be likely that deception will thereby be practised. *Explanation.* It is not essential to counterfeiting that the deception should be exact. S. 28, Penal Code.

COIN is metal used for the time being as money and stamped and issued by the authority of some State or Sovereign Power in order to be used. Act XIX, 1872, S. 1: S. 280, Penal Code.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

(S. 373, para. 2; S. 374.)

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

"Reason to believe." A person is said to have reason to believe a thing if he has sufficient cause to believe that thing, but not otherwise. S. 26, Penal Code.

The definition of "wrongful confinement" is thus given in the Penal Code. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person (S. 339), and whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said wrongfully to confine that person. (S. 340.)

D.—General Provisions relating to searches.

Direction, &c. of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 38 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

(Ss. 370—373, para. 1; Ss. 375, 376.)

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(Ss. 382, 383, 384.)

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(S. 385.)

All search-warrants must be executed in daylight, *i. e.*, between sunrise and sunset, unless there be special reasons demanding immediate search; but in such a case the reasons must be specially reported to the District Superintendent for the information of the Magistrate having jurisdiction.—Beng. Pol. Cir. 21, 1862.

The sending for shopkeepers selected arbitrarily by the Police and making them witnesses to the search of the houses of accused person is a fruitful source of oppression and extortion. It is difficult to prescribe rules for the selection of witnesses to the search of houses for stolen property, but District Superintendents can easily ascertain by

Ch. VII. — Ss. 104—105. — Ch. VIII. — S. 106.

questioning the witnesses sent whether they have been unfairly selected, the respectable householder should not be summoned a second time until his neighbours have had their turn, unless good reason be given for their exemption. Suspected shopkeepers are just as liable to be summoned as other respectable inhabitants of a place.—Beng. Pol. Cir. 4, 1868.

E.—Miscellaneous.

Power to impound document, &c. produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

(S. 367.)

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

(S. 378, para. 2.)

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(S. 489, para. 1; Ss. 490, 493, para. 1.)

Sch. V. No. 10 contains a form of bond to keep the peace.

Bonds in criminal cases are exempt from Stamp duty, Court Fees Act (VII, 1870) S. 19, Cl. xv. Sch. II, Art. 6 further declares that bail bonds and other instruments of obligation, not otherwise provided for by that Act, when given by direction of any Court shall bear a stamp fee of eight annas.

The words "or any person accused of committing criminal intimidation by threatening injury to person or property" are new and have been introduced in consequence of the judgment of Straight, *J.* in the case of Raghubar, I. L. R., 2 All, 351. It should be noted that these words do not express all the acts that amount to the offence of criminal intimidation as defined in S. 503, Penal Code, as "injury to reputation" is not specified in section 106.

The Calcutta High Court has refused to set aside an order requiring security to keep the peace on conviction of criminal trespass (not one of the offences specified in S 106) on the ground that the conduct of the party bound over, as shown in the evidence on the trial, indicated an intention to commit a breach of the peace. Gendoo Khan, 7 W. R., 14: Jhapoo and others, 20 W. R., 37.

If a Magistrate of the second or third class requires a bond to be executed under S. 106 his proceedings are void (S. 530) but if, at the conclusion of the trial, he should be of opinion that the convict should also execute a bond to keep the peace as provided by S. 106 he should record his opinion to that effect and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate who can pass such order as he may think fit and as is according to law. S. 349.

If the person required to give security under S. 106 is under sentence of imprisonment, the period for which security is required will commence on expiration of that sentence (S. 120), and if the conviction and sentence are set aside on appeal, "the bond so executed shall become void," S. 106 (The order would become incapable of being enforced by requiring a bond to be executed.) S. 123 provides for the course to be taken if security is not given "on or before the date from which the period for which such security is to be given commences."

Under S. 106 which does not reproduce the last para. of S. 489 of the Code of 1872 it would seem that security to keep the peace

Ch. VIII. — S. 107.

in consequence of proceedings on a criminal trial can be taken only by a Court before which the case may come judicially, either as a Court of first instance or of appeal, or in the case of a Magistrate on a reference by a subordinate Magistrate under S. 349 as already explained. See Bebheki Pathak, 21 W. R., 12.

The difference between the procedure necessary in order to require security under S. 106 and under Ss. 107, 108 should be noted. In the former case, the order can be passed on conviction of any of certain specified offences; in the latter, formal proceedings must be taken, summons in the first instance being issued and evidence taken as in trials in summary cases, (S. 117), to prove that it is necessary for keeping the peace that the person summoned should execute a bond with or without sureties. The reason for the difference is obvious In the one case the Magistrate has adjudicated on the evidence on the trial in the presence of the person to be bound over, that facts are established requiring security because he has convicted the accused of a breach of the peace or an intention to commit a breach of the peace, whereas in the other case the Magistrate proceeds on information, the value which must be tested in the presence of the person concerned who should also have an opportunity of showing that it is not reliable. In the matter of Umda Khanum, 3 Cal. L. R, 72: Raja Run Bahadoor Singh, 22 W. R., 79.

Although an order requiring security to keep the peace is not appealable, the District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond executed by the order of any Court not superior to his Court. S. 125. And a similar provision is made (S. 124) for the release of any person imprisoned on failure to give security, report to be made if such order was passed by a Court of Session or High Court.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(Ss. 491, 502, last para.)

The jurisdiction of the Magistrate should be noted. He may take proceedings to require security from a person likely to break the peace within his local jurisdiction, or from a person who is within his jurisdiction and is likely to commit a breach of the peace beyond it. The terms of the bond would be general so that it could be enforced on breach of its conditions in any part of British India. See S. 121 *post*.

The summons to show cause would be in the form prescribed by Schedule V, No. 12.

If a Magistrate not duly empowered in that behalf demands security to keep the peace, his proceedings are void. S 530 (*j*)

Inasmuch as the order to be made under S. 112, copy of which is to be delivered to the person summoned to show cause, should set forth the substance of the information received on which proceedings have been taken, the Magistrate should terminate the proceedings by refusing to pass any further order if he finds that that information is unfounded. The party summoned should not be called upon to furnish security on a perfectly distinct ground from that on which the proceedings were started without being afforded anew a full and complete opportunity of meeting and answering any further ground which in any sufficient way may have arisen for still suspecting that he was likely to commit a breach of the peace. Ram Kishen Acharjee Chowdhry, 21 W. R, 6.

It must appear, on the face of the Magistrate's order, that he has received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do an act that might probably occasion a breach of the peace.—Bireshuree Prashad, 6 W. R., 93

When a person appears before a Magistrate and swears that he is in fear of his life on account of the conduct of a person named, the Magistrate is competent to consider such to be credible information within the terms of S. 107, and may act thereupon (Tarinee Kant Lahory, 8 W R., 79; Krishtendro Roy, 7 W. R., 30) ; but a mere petition, unsupported by any definite complaint or deposition on solemn affirmation, and which did not state that there was any probability of a breach of the peace, was held not to amount to credible information — Chamaro Malo, 8 W. R., 85.

The report of a Subordinate Magistrate is credible information, upon which the Magistrate of the District is competent to act— Nellikel Edatthil Itti Pungy Achen, 2 Mad., 240; also the report of a Police officer—Bindabun Shaha, 10 W. R., 41.

The report of a Subordinate Magistrate, though it is credible information on which a Magistrate can issue a summons under S. 107, is not evidence on which he can arrive at a conclusion that the parties are likely to commit a breach of the peace—Napa bin Basapi, Bom. H C., November 23, 1871; nor is a Police report legal evidence— Obhaya Chowdry, 6 B. L. R., 148, *App*.

The act of which information is given and in respect of which security is required must be an act shown to have been in contemplation at the time the information was given, and not merely one a repetition of which may be apprehended from past misconduct of the kind without anything further. Thus the fact that certain persons were constantly creating disturbances in certain bazars is insufficient ground. Mad. H. Ct. Pro. Aug. 29, 1876. Weir, 298.

Ch. VIII.

Ss. 108, 109.

The law now expressly declares that the act which may probably occasion a breach of the peace must be a wrongful act. This is in accordance with the opinion expressed in Kashi Chunder Dass, 19 W R., 47, where security was taken from a man who was building a wall on his own land merely because his neighbour objected to it on the ground that the droppings from that wall would probably fall on the thatch of his house and injure it, and a breach of the peace was consequently anticipated. The High Court held that it was never intended that a person should be prevented by a Magistrate from exercising his rights of property because another person is likely to commit a breach of the peace if he did so.

Similarly where a Ticcadar applied to the Police for protection while attaching the crops of ryots for arrears of rent, it was held that because a breach of the peace was likely to ensue was insufficient ground for requiring him to give security. In re Sheo Churn Lall, 3 Cal. L. R., 80.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

(S. 494 Proviso.)

Security for good behaviour for vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

(S. 504, paras. 1 and 4; S. 515, para. 2.)

Schedule V, No. 11 contains the form of bond for good behaviour.

If a Magistrate not duly empowered in that behalf demands security for good behaviour, his proceedings are void S. 530 (*l*).

An officer in charge of a Police-station can without warrant arrest any person conducting himself in the manner described by S. 109 (S. 55) and he can also by an order in writing direct any Police-officer to arrest such a person. (S. 56.)

Proceedings taken under S. 109 should be quite irrespective of any proceedings on account of any offence committed. 1 W. R. 14, C. L.: Shunder Bhim, Bomb. H. Ct. Sept. 17, 1869.

Proceedings should not be taken against more than one person in each case. The character of each person should form the subject of a separate inquiry. The evidence against one should not be mixed up with evidence against another. By such a course of proceeding there must be considerable danger of a man being prejudiced. *In re* Koikot Noshyo and another, Cal. H. Ct. June 14, 1877. See also Mad. H. Ct. Pro. March 17, 1863. Weir, 299.

Security for good behaviour from habitual offender.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

(Ss. 505, 506.)

If a Magistrate not duly empowered in that behalf demands security for good behaviour, his proceedings are void. S. 530, (*d*).

Sch. V, No. 11 gives a form of bond for good behaviour.

The object of this provision of the law is the prevention not the punishment of crime, and with that object it authorizes a Magistrate to

Ch. VIII.

S. 110.

require from particular persons good and sufficient security for their good behaviour. But it is only for the purpose of securing future good behaviour that this power should be used Any attempt for the purpose of punishing for past offences is wrong and not sanctioned by law. Umbica Prashad, 1 Cal. L. R., 268.

Because a person is by no means a reputable character is no sufficient ground for requiring him to furnish security for good behaviour. Kalachand Dass, I. L. R., 6 Cal., 14.

Where the charge upon which a person is tried is one of injury to the person, a Magistrate cannot require security for good behaviour on the ground that the accused is a person of violent or dangerous character. S. 110 solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate or dangerous," to find security for good behaviour, as a protection to the public against repetition of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardised. The mere fact of a previous conviction or previous convictions of offences involving dishonesty is not sufficient to justify the putting in force the powers of S. 110 unless there is some additional evidence to show that the person complained against has done some act or resumed avocations that indicate on his part an intention to return to his former course of life and to pursue a career of preying upon the community. The greatest thief is entitled to a *locus penitentiæ*, when he has served out his punishment; it is only when he outrages that grace which is extended to him, and thereby shows that he is unreformed, that the machinery of the Code should be brought into operation, in order to obtain a substantial guarantee for society that he will not commit further depredations upon it. Nawab, I. L. R., 2 All., 835; see also Narain Soobadhee, 6 W. R., 6.

Proceedings under S. 110 should not be taken while the person against whom they are directed is under trial for an offence committed by him as such a course is likely to prejudice him very seriously on his trial. The Calcutta High Court in the case of Umbica Prashad and another, 1 Cal. L. R., 268 strongly condemned such proceedings. In that case Umbica Prashad was committed on a charge of "receiving" (S. 411. Penal Code) and bail was refused by the Magistrate. On a motion made to it, the High Court ordered bail to be taken out. Before Umbica Prashad could reach his house, proceedings under S. 110 were instituted although at the same time his trial for a criminal offence was pending. He was required to give security for good behaviour or on default to suffer rigorous imprisonment, and on being committed for trial by the Court of Session was acquitted of the charge of dishonestly receiving stolen property. The order requiring security for good behaviour was set aside, the High Court observing that when, in the case of a man who has never been convicted of any offence, the Magistrate orders that security shall be given of a description which it is necessarily difficult to find and directs that in default of giving the security, the imprisonment shall be rigorous, the Magistrate has exercised his discretion in a manner wholly unreasonable and bad, and more especially when he indicates no reason why with a view to the prisoner's future good behaviour it is desirable that the imprisonment shall be of the more severe kind. The proceedings either were illegal and wrongly instituted for the sole purpose of securing

at all hazards the punishment of the petitioner, or there was an utter and fatal want of discretion in their institution and in the order made.

After the expiration of the term of security, a second security cannot be demanded except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. If, on being set at liberty, he should return to his former course of life, and it appears that he continues to be a person of such a character whom it is dangerous to the community to have at large, he may be brought before a Magistrate, and after evidence of his proceedings has been laid before such officer, a further order may be passed requiring him to give first security.—Sheikh Himayat, Cal H. Ct., July 29, 1862; Juswunt Singh, 6 W. R., 18; Danee, 4 Panj. Rec., 72.

Proviso as to European vagrants

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

(S. 517.)

Any Police-officer may within the limits of the towns of Calcutta, Madras and Bombay require any person who is apparently a vagrant to accompany him or any other Police-officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure. The European Vagrancy Act, (IX of 1874,) S. 4. A vagrant is defined to be a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence.

Any European British subject, who upon the summary inquiry mentioned in section 5 (of the European Vagrancy Act 1874), has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject beyond the limits of the said towns to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII, now Chapter VIII of the same Code) applicable to an European not being a British subject. S. 30, Act IX of 1874. S. 22 refers to the conviction of a person who having entered into an agreement that he will not return to India for five years breaks that agreement and S. 23 to persons of European extraction asking for alms.

Order to be made.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

(Ss. 492, 509, para. 1; S. 515, para. 1.)

Ch. VIII. — S. 112.

S. 107 refers to security to keep the peace; Ss. 109, 110 to security for good behaviour.

The Code of 1872, now repealed, required that these matters should be set forth in the summons. S. 112 of this Code directs that they shall be set forth in an order in writing made by the Magistrate. S. 115 requires that every summons or warrant issued in proceedings under this chapter shall be accompanied by a copy of this order which shall be delivered at the time of service of the summons or execution of the warrant of arrest.

The directions of the law in this respect should be carefully complied with, but an omission, unless it has prejudiced the party summoned, would not vitiate an order requiring security. Koonj Behari Chowdhry, 15 W. R., 43. But in the case of Abdoor Bari, 25 W. R., 50, it was held that unless this and other necessary particulars were stated in the summons, so as to give the party an opportunity to show cause, no order for security can be passed. (If any such irregularity has been committed it can easily be cured by proceeding under S. 113 and by giving the person concerned time to defend himself.)

For the expression "description of sureties" in the corresponding section (509) of the Code of 1872, S. 112 of this Code has substituted "character and class of sureties."

The sureties required need not necessarily be residents of the District. The Magistrate is not competent to reject as an unfit person a surety offered merely because he resides in another District, and more especially when his order does not place any limit with regard to the description of the sureties required; undue and unnecessary difficulties cannot be legally thrown in the way of persons attempting to furnish the required sureties. *In re* Sunt Belas Singh, Cal. H. Ct., March 29, 1879.

A Magistrate required the sureties to be persons of "respectability and substance not related to him and residing within one mile of his house." It was found on inquiry that no person of respectability lived within that area. The High Court found that security should be demanded, but expunged the condition, remarking that the law does not enable a Magistrate to impose arbitrary conditions not essential to the object in view, *viz.*, to restrain a party from infringement of the law, still less impossible conditions. To make such an order was equivalent to saying that the prisoner shall not furnish any security at all, but must go to jail.—Narain Soobhoodee, 22 W. R., 37.

An order directing a person as security to "pledge all his proprietary rights in land worth Rs. 200" was held to be an improper order. As long as the security is good and sufficient, and the sureties are of a satisfactory character and class, they cannot be rejected. *In re* Ganni, All. H. Ct., 1875, p. 249

The following rule has been passed in British Burmah on this subject—

The Courts will reject as sureties all officials of the Courts and any relations of such officials, except in a case where they may be nearly related to or near neighbours of the persons called upon to give security.

The Courts will also reject as sureties all persons who the Court knows, or has reason so believe, are making a profession of becoming sureties for others in consideration of payment.

The officials of all Courts are prohibited, under pain of dismissal from receiving any commission on the amount of the surety bond in

cases when they are admitted as sureties.—*British Burmah Gaz.*, 1873, Part III, p. 3.

In fixing the amount of security, a Magistrate should consider the station of life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by the individual and not as a punishment for a crime committed, and being made conditional on default of finding security, it is only just and reasonable that the individual should be afforded a fair chance at least of complying with the required condition of security.—4 Mad. xlvi., *App.* Pro., April 16, 1869, Weir, 301. This has been quoted with approval by the Calcutta High Court in the case of *In re* Dedar Bukhsh and others, 1 Cal. L. R., 95; (S. C.) I. L. R., 1 Cal., 384, in which also it was held that where *primâ facie* the amount of security required seems excessive and unreasonable the High Court is competent to call upon the Magistrate to state the grounds on which he paid that amount.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

(S. 492, Expl.)

This course should be taken whenever as in the case of Ram Kishen Acharjee Chowdhry, 21 W. R, 6 (See note to S. 107 *ante*) the information on which proceedings were originally taken is found to be unreliable or groundless, and facts subsequently transpire on which the Magistrate considers he should proceed.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

(Ss. 494, 515, para. 1.)

Ch VIII.

Ss 115 —117.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

The serving officer in certifying service should also certify delivery of the copy of the order. Ss. 70, 71 provide for the service of summons.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader,

(S. 495.)

Pleader in any proceeding under this Code before any Criminal Court means a pleader authorized under any law for the time being in force to practise in such Court and includes (1) an advocate, a vakil and an attorney of the High Court so authorized and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding. S. 4 (*n*).

Inquiry as to truth of information.

117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(S. 491, Expl.; S. 515, para. 3.)

This section practically reproduces S. 491, Expl. 1 of the Code of 1872 which declared that a Magistrate cannot bind over a person until he has adjudicated on evidence before him. S. 117 of this Code requires the Magistrate to "proceed to inquire into the truth of the information upon which he has acted," that is, has passed the order under S. 112 and issued process for the attendance of the particular person. An opportunity should obviously be afforded to that person of disproving the truth of the information by cross-examination of the witnesses or by offering evidence on his own part.

When the Magistrate who has commenced proceedings under this chapter has vacated office, his successor may continue them, but the party summoned or arrested may insist on having all the witnesses examined *de novo*. Baroda Kant Roy, 4 Cal. L. R., 452. See S. 350 *post*.

If witnesses are cited for the defence the law, (S. 244) in summons cases, leaves it to the discretion of the Magistrate, on application made, to issue process to compel the attendance of any witness, but he may before summoning any witness on such application require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

A similar provision is made for the deposit of the expenses of witnesses in warrant cases (S. 257) but the Magistrate is not bound to issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice, such ground being recorded in writing.

In summons cases it has been held that "under ordinary circumstances a Magistrate is bound to arrest both parties in bringing in their witnesses by issuing summons to attend." Cheyt Singh, 22 W. R., 70.

An inquiry should be conducted with due attention to the ordinary forms of justice. The party defendant should have every opportunity of cross-examining the witnesses produced against him, of making his own statements, and of calling witnesses on his own behalf. But evidence of character, good or bad, should be general not particular, it being of course of use to the other side to cross-examine as to particulars as to the party may seem necessary or prudent. It is for the presiding Magistrate in his discretion to put such questions to the witnesses on either side as he considers needed to inform his own conscience. Mad. H. Ct. Pro., Nov. 3, 1868, Weir, 300.

It is not sufficient for the Magistrate to say that there is suspicion. He should distinctly explain to the defendant what is proved against him. He should not put the defendant into *hajut* or close custody pending the final hearing. The fact that an officer in charge of the Police-station can arrest without a warrant, does not justify such an order, for a Magistrate is not competent to refuse bail unless the law specially sanctions such refusal, and when the Magistrate, by his final order has no power to commit the person to jail except on his failure to give recognizances or security he must do so in the like manner pending inquiry. Kookur Singh, 1 Cal. L R., 130.

With reference to the last para. of S. 117 the terms of S. 54 of the Evidence Act should be borne in mind :—In criminal proceedings the fact that the accused person has been previously convicted of a criminal offence is relevant; but the fact that he has a bad character is

Ch. VIII. — S. 118.

irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant. *Explanation.* This section does not apply to cases in which the bad character of any person is itself the fact in issue. S. 54, Act 1, 1872, Evidence Act.

Although where witnesses are examined as to general character, their testimony is not of much value as to the habits of a suspected person, unless they can in support of their opinion adduce instances of the misconduct imputed, when the question is only as to his *repute* the evidence of witnesses, if reliable, is not without value, though they may not be able to convict the accused person with the actual commission of crime. *In re* Pedda Swa Reddi and another, I. L. R., 3 Mad., 238.

Order to give security.

118. If upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(S. 497.)

An order passed by any Magistrate other than the District Magistrate or Presidency Magistrate is appealable. S. 406.

In fixing the amount of security, a Magistrate should consider the station of life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by the individual and not as a punishment for a crime committed, and being made conditional on default of finding security, it is only just and reasonable that the individual should be afforded a fair chance at least of complying with the required condition of security.—4 Mad. xlvi., *App.* Pro., April 26, 1869, Weir, 301. Approved and followed *In re* Dedar Bukhsh, 1 Cal. L. R., 95. (S. C.) I. L. R. 1 Cal., 384.

If in fixing the amount of the sureties, the Magistrate appears to have exercised no discretion at all, or has exercised his discretion in a

manner wholly unreasonable, the High Court, as a Court of Revision, will interfere. Juggut Chunder Chuckerbutty, 1 Cal. L. R., 48. When *primâ facie* the amount of security required seems excessive and unreasonable the High Court is competent to call upon the Magistrate to state the grounds on which he fixed that amount. *In re* Dedar Bukhsh and others, 1 Cal. L. R., 95: (S. C.) I. L. R., 1 Cal., 384.

Although in the case of a minor the bond shall be executed only by his sureties, he should appear and defend the case himself or if his attendance is excused by his pleader.

When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government Promissory Notes to such amount as the Court or officer may fix in lieu of executing such bond. S. 513. S. 514 lays down the procedure for forfeiture of a bond.

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

(S. 496.)

The terms of S 119 would not justify a detention in custody except on failure to furnish the bail required. See *In re* Kookur Singh, 1 Cal. L. R. 130 quoted in note to S. 118.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

(Ss. 489, para 2; S. 504, para. 2.)

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour as the case may be, and in the latter case the commis-

sion or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

(S. 502, para. 6.)

The order of forfeiture should be passed at the time of passing sentence for the offence which constitutes the breach of the bond. Thus where A was bound over on 1st November 1875 on the petition of B to keep the peace for one year and on May 30, 1876 he was convicted of an offence attended with violence against C, but it was not until November 8, 1876 that B obtained an order from the Magistrate calling on A to show cause why the penalty of his bond should not be enforced, and on April 30, 1877 its forfeiture was ordered, the proceedings were set aside by the High Court who pointed out that the object of the bond was to keep the peace for one year, but after expiry of that time the only object of enforcing that order would be by way of fine or punishment for what had been done before expiry of the year. The Magistrate who convicted A in May 1876 had before him the fact that A had entered into recognizances to keep the peace, and as he did not think it proper to proceed against those recognizances, it must be concluded that he thought that the sentence of fine, which he passed, was sufficient. *In re* Ram Chunder Laha, 1 Cal. L. R., 134. See also In the matter of Parbuty Churn Bose, 8 Cal. L. R., 406.

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

(S. 516.)

See note S. 112.

Imprisonment in default of security.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court of Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not

give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

(S. 489, para. 1; Ss. 490, 497, 498, 499, para. 3; Ss. 507, 508, 510.)

Sch. V, Nos. 13 and 14 give the forms of warrants commitment to prison on failure to find security.

Power to release persons imprisoned for failing to give security.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

(Ss. 500, 511, 512.)

This is of course quite irrespective of the power of the District Magistrate as an Appellate Court under S. 406.

If any Magistrate not being empowered by law in that behalf discharges a person lawfully bound to be of good behaviour, his proceedings are void. S. 530 (*e*).

Sch. V, No. 15 gives the form of warrant to discharge a person imprisoned on failure to give security.

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

(S. 500.)

If any Magistrate not being empowered by law in that behalf cancels a bond to keep the peace, his proceedings are void. S. 530 (*f*).

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

(Ss. 501, 513.)

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or Police-officer.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the police in the towns of Calcutta and Bombay.

(S. 480.)

An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislature or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant, in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right;—

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally bound to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. S. 141, Penal Code. Any person who being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. S. 142.

The offence of being a member of an unlawful assembly is a cognizable offence and therefore under S. 54 of this Code any Police officer, may, without orders from a Magistrate, and without a warrant, arrest any person who is concerned in such offence, or against whom a complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been a member of such assembly.

Being a member of an unlawful assembly is punishable with imprisonment, rigorous or simple, for a term not exceeding six months, or with fine or both, S. 143; and joining or continuing in an unlawful assembly, knowing that it has been commanded under S. 127 of this Code

Ch. IX. — to disperse, is punishable with imprisonment, rigorous or simple, for a term not exceeding two years, or with fine, or both. S 144, Penal Code.

Ss. 128, 129. If any part of the country be in a disturbed or dangerous state, it is lawful for the Inspector-General of Police, with the sanction of the Local Government to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any Police Force in excess of the ordinarily fixed complement to be quartered therein. The inhabitants of that part of the country will be charged with the cost of such additional Police Force, and the Magistrate of the District is to assess the proportion to be paid by them.—Act V, 1861, S. 15.

S. 17 of the same Act enacts that when it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of the property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as special Police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being commanded, it conducts itself in such a manner as show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

(S. 481.)

Every person is bound to assist a Magistrate or Police officer personally demanding his aid in the prevention of a breach of the peace or in the suppression of a riot or affray. S. 42.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who

is present may cause it to be dispersed by military force.
(S. 482.)

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.
(S. 484.)

Power of Commissioned Military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.
(S. 487.)

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

(Ss. 483, 485, 486, 488.)

Nothing is said to be done or believed in good faith, which is done or believed without due care and attention. S. 52, Penal Code.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Subdivisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing

by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

(S. 521.)

Section V, No. 16 contains various forms of orders under this section.

In MADRAS all Magistrates of the first class have been empowered to act under S 133 (*Gaz.*, 1873, p. 717); a similar order has been issued in BOMBAY, provided that the Magistrate is not an Honorary Magistrate, when a special order in each case is necessary (*Gaz.*, 1872, p. 1325: *Ibid*, 1873, p. 16); in the PUNJAB, all senior officers at head-quarters, under the Magistrate of the District, being Magistrates of the first class, have been vested with powers under S. 133, to be exercised only when the Magistrate of the District is absent from head-quarters. For such purposes the senior Assistant Commissioner being a Magistrate of the first class shall be deemed to be the senior officer under the Magistrate, and if there be no such officer, the senior Extra Assistant Com-

Ch. X. — S. 133.

missioner being a Magistrate of the first class, shall be so deemed.—*Gaz.*, 1873, p. 75.

If any Magistrate not being duly empowered by law in that behalf makes order under S. 133, his proceedings shall be void. S. 530 (*g*).

But though proceedings can be taken under S. 133 only by a District Magistrate, a Subdivisional Magistrate or a specially empowered Magistrate of the first class, any such officer can order the person against whom the conditional order is made to appear before a Magistrate of the first and second class who will have the conduct of all subsequent proceedings.

An important extension of this section has been made by the last clause of S. 4 under which all words and expressions used in this Code and defined in the Indian Penal Code and not specially defined in S. 4 of this Code shall be deemed to have the meanings attached to them respectively by the Penal Code. S. 11 of the Penal Code declares that the word "person" includes any Company or Association or body of persons whether incorporated or not.

From the terms of the second clause the nuisance would probably be held to be a public nuisance from the place in which it is committed. S. 268, Penal Code, declares that a "person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage."

A Magistrate having once commenced proceedings under S. 133 cannot take up the matter summarily under S. 145. He is bound to proceed in the manner laid down in S. 133, and the following sections in Chapter X of the Code. Pitti Singh, 8 W. R., 37. If he thinks that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue an injunction, and on failure to comply with that injunction may himself take measures to obviate such danger or prevent such injury. S 142.

An order under S. 133 regarding a nuisance should be confined to a direction to remove it. In the case of a tank the Magistrate cannot order the proprietor to excavate it, for the proprietor should have the discretion allowed him as to the manner in which he will remove the nuisance caused by the tank. If the Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposal the soil taken out in the course of excavation must be placed.—Pal Doss, 10 W. R., 51.

Where a tank is merely a reservoir of water, the Magistrate's powers are limited to an order to have it fenced in to prevent accidents, but where it is only a half dry excavation into which people are in the habit of throwing rubbish, and from this cause it has become a public nuisance, the Magistrate would be justified in ordering it to be filled up if that were the only way of suppressing the nuisance.—Bisto Chunder Chuckerbutty, 10 W. R., 27.

It is only where there is no doubt that the place on which the unlawful obstruction or nuisance has been committed is a "way, river or

channel which is or may be lawfully used by the public" or "a public place" that a Magistrate can take proceedings under S, 133, Pitambur Jogi, 25 W. R., 4. It has been held by the Calcutta High Court under the Code of 1872 that when this is disputed by the persons against whom the conditional order under S. 521 of the Code of 1872 (now reproduced in S. 133) has been passed, the Magistrate should abstain from giving effect to his order until that has been decided by a Civil Court or by a Magistrate under S. 532 of the Code of 1872. If under a mistaken view of the law and in spite of the objection raising the question of the right of way the Magistrate should appoint a jury, then his order could not be found to be reasonable and proper, because at the outset of their inquiry the jury would be met by the *bonâ fide* objection that the road was private and not public property. In the matter of Chunder Nath Sen, 1 W. R., 5 Cal., 875; (S. C.) 6 Cal. L. R., 379: Roy Omesh Chunder Sen, 21 W. R., 67. See also Weir, pp. 304, 305. In re-enacting S. 532 of the Code of 1872 in S. 147 of this Code the Legislature has limited the action of the Magistrate to those cases only on which there is a dispute likely to cause a breach of the peace. This means therefore of determining such an objection would rarely be available. How far a Civil suit will lie, will appear on reference to Rooke *v.* The Pearce Lall Coal Co., 11 W. R., 434; Baroda Pershad Moostafee *v.* Gorachand Moostafee, 12 W. R., 160: Moti Lall Sahoo *v.* Mohi Lall Roy, 7 Cal. L. R., 433.

A Magistrate cannot interfere to re-open a private path leading from the house of a person to a public thoroughfare, as such path is not a thoroughfare or public place. The person affected was referred to the Civil Court.—Jankee Nath Bhuttacharjee, 2 W. R., 36.

Nor can a Magistrate order the removal of an obstruction of a drain into which the sewage of certain premises fell.—*In re* Troylokhyonath Bose, 5 W. R., 58.

Where the public have an admitted right to use certain place as a burning ghaut, it is not competent for a Magistrate, on the complaint of a private individual, to prohibit it as a nuisance—Becharam Ghoroooo, 14 W. R., 177. But see *contra* Mun. Comrs Sub. Cal., 7 B. L. R., 499, in which the condition and conduct of an old established slaughter-house was proved to be an offensive nuisance and dangerous to the health of the neighbours, but the evidence did not show that it was in a worse condition than at any time since its establishment. The High Court held that no length of enjoyment can legalize a public nuisance, and that the Magistrate was justified in regarding it as a nuisance under S. 133.

A prosecution under S. 268, Penal Code, for a public nuisance, is not illegal on the ground that proceedings have not been previously taken under Chapter X of the Code of Criminal Procedure.—Sukh Lall and others, Bomb. H. Ct., Sep. 17 1869.

A party, feeling aggrieved by an order passed by a Magistrate under S. 133 cannot file a suit for damages against the persons who instituted proceedings before the Magistrate, unless he can show that in moving the Magistrate they were actuated by malicious motives against him, or intended wrongfully to injure him.—Chintamoni Bapoohee *v.* Degumber Mitter, 2 B. L. R., 15, *Short Notes.*

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

(S. 522.)

Ss. 69 *et seq.* relate to the service of summons.

The mere absence of service of notice to remove a nuisance is not sufficient ground for interference with the order of a Magistrate when it appears that the parties did not take that objection before that Officer, but they rather admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.—Hochan *v.* Elliot, 5 W. R., 4.

Person to whom order is addressed to obey.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

or show cause or claim jury.

(S. 523, para. 1.)

The application for an order for the appointment of a jury should be written on a stamp paper of eight annas. Court Fees Act (VII, 1870) Sch. II, Art. 1 (*b*).

After such an appliction has been made the Magistrate is bound to appoint a jury. He cannot dispose of the matter by a local inquiry *In re* Mothoor Chunder Dass, 2 Cal. W. R., 509.

If the person against whom the order is made appears and shows cause, the Magistrate should proceed to take evidence as directed by S. 137.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

(S. 525.)

When the party against whom the order was passed did not appear within the time specified, but appeared before the hearing of the case, it was held that the Magistrate was bound to hear him. *In re* Bishto Chunder Chuckerbutty, 10 W. R., 27.

S. 188 of the Indian Penal Code declares that "whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both. *Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

Before proceedings under S. 188, Penal Code, can be taken, the sanction or complaint of the Magistrate who issued the particular order or of some officer to whom he is subordinate, that is, to whom appeals against his orders lie, must have been obtained; such sanction should specify the occasion on which the offence was committed. S. 195. The Court in contempt of whose authority or to whose notice the offence was brought in the course of a judicial proceeding is debarred from trying the case. S. 487.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

(Ss. 525, 537.)

Evidence will probably be taken as in summons cases. Ss. 355 *et seq.*

If the order be for the removal of an unlawful obstruction or nuisance from a way or channel which is or may be lawfully used by the public or from any public place, and objection is taken that the place said to be obstructed or on which the nuisance is said to exist is not one of that description, the Magistrate will have to try that matter first before taking evidence whether his order is reasonable or proper—*In re* Chundernath Sen, I. L. R., 5 Cal., 875; (S. C.) 6 Cal. L. R., 579: Roy Omesh Chunder Sen, 21 W. R., 67. See also Weir, 304, 305. When

Ch. X. — S. 138.

the Magistrate took no evidence, notwithstanding the party appeared and showed cause, the order was set aside.—*In re* Mohur Mundir, 8 Cal. L. R., 431.

The second clause of S. 137 is in accordance with the case of *In re* Shonaí Paramanik, 1 Cal. L. R., 486.

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(S. 523, paras. 2, 5; S. 524.)

Sch. V, No. 17 contains the form of a Magistrate's order constituting a jury.

A Magistrate acting under S. 138 should exercise his own independent discretion in selecting the members of the jury which the law requires him to appoint, and the persons selected should not be the nominees of the party interested in upholding the Magistrate's order. In a case in which the Magistrate appointed nominees, the proceedings were quashed.—Raja Satyanund Ghosal, 21 W. R , 43.

The parties concerned should not be appointed members of the jury. It is not competent to any one to exercise the authority of a Court of Justice as judge in his own cause, and it is plainly against the most elementary principles of right and equity that an applicant for justice to a Criminal Court, or indeed to any other Court, should be compelled to submit his case to the arbitration of his adversary. On these grounds the order of a Magistrate was set aside, which was based on the report of a jury consisting of the petitioner in the case and two of his witnesses, notwithstanding the protest of the opposite party.—Brindabun Dutt, 22 W. R., 47.

Where one of the jurors was unavoidably absent and unable to investigate the matter, and the Magistrate appointed a fresh juror, he was bound to fix a fresh term for the submission of the finding of the jurors, since the fixing of time is a condition precedent to the exercise by the Magistrate of the power to decide the case himself if no report be sent in.—Shama Kant Bandopadhya, 14 W. R., 69.

Merely because a jury has failed to send in its report, a Magistrate is not competent to appoint a second jury, and to commit the matter afresh to the second jury. In the event of a jury duly appointed under S. 138 being unable for some good cause to entertain and determine the matter submitted to it, a Magistrate can appoint a fresh jury. Suppose, for instance, that before the jury had discharged its

functions, one of its members died; or, suppose the jury became perverse and refused to entertain the matter for which it was appointed, in such cases it may be well that the first order of appointment ought to be considered as having fallen through and become useless, and the Magistrate would then have power under S. 138, to appoint a fresh jury. But here it appeared that the first jury had considered the matter submitted to it and the individual members had given in their opinions to the Foreman to report to the Magistrate even before the second jury was constituted. The failure was that the Foreman omitted for a time to make the formal report to the Magistrate. But that report did eventually reach the Magistrate through the Foreman of the second jury before he made the order complained of. Under the circumstances, that was the report by which he was bound to guide himself, and the report of the second jury was, so far as regards the objects of S. 138, in itself a nullity.—*In re* Nozumuddy, 21 W. R., 54.

The jury having failed to report within the prescribed time, but having reported subsequently, it was held by the Bombay High Court that the Magistrate was bound to give due weight thereto, and should not have proceeded to enforce his order, at the same time refusing to permit the party concerned to show cause against it under S. 137. The Court remarked that the law evidently contemplates that considerations of justice and equity should form the rule of the Magistrate's conduct in such matters. The exercise of such summary powers requires both experience and discretion in a Magistrate, and a careful consideration of the rights of property.—Dalsukram Haribhai, 2 Bomb., 410.

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

(S. 523, para. 3; S. 526, para. 1.)

If grounds of objection to the verdict of a jury are brought to the notice of the Magistrate, such as to justify the conclusion that it was not a proper verdict, then he ought to inquire into the validity of those grounds. The objection must be made as specifically as possible, and the objector must pledge himself to establish definitely such facts as would, when proved, suffice to render the verdict invalid and improper.—Brindabun Chunder Dutt, 23 W. R., 15.

The law requires every juryman to exercise his own understanding on the case submitted to him and to decide on evidence. Where a juryman who made the majority followed blindly the opinion of two of his fellows without exercising any discretion of his own and merely on verbal report made by them, the report was declared to be void. Petambar Jugi, 25 W. R., 4.

Unless the report be some modification of his order, and it be otherwise open to no objection, the Magistrate is bound to accept the report of the jury; but if it be not clearly expressed, he may call upon the jury definitively to state whether his order was or was not a reasonable and proper order, Poholee Mullick, 12 W. R., 28.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequence of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

(Ss. 525, 526.)

See note 6, S. 136.

Sch. V, No. 18 contains a form of the Magistrate's notice and peremptory order after a finding by a jury.

S. 538 declares that no distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any defect or want of form in the summons, writ of distress or other proceedings relating thereto.

Nothing is said to be done in "good faith" which is done without due care and attention. S. 52, Penal Code.

The consequences of an interference by a Civil Court with an order passed by a Magistrate under this chapter are commented on in the case of Ujalmoni Dassee *v.* Chunder Koomar Neogi, 4 B. L. R., 24 *Full Bench:* (S. C.) 12 W. R., 18 (F. B.) "If when a Magistrate having entered into the question has determined that a nuisance does exist, he is to be restrained by a Court of Civil Judicature from carrying this order

into execution, it might be two or three years before the nuisance could be removed, by which time all the injury may have been sustained. While the suit is going on, persons may be poisoned by the malaria arising from the nuisance, or the conflagration may take place, or lives may be lost by the falling of a ruinous wall on passengers, or their cattle may be drowned in a tank or well which has not been properly fenced to prevent danger.

"The object of the Act is to enable the Magistrate to make an order speedily, and speedily to carry that order into execution. It would be mere trifling with the Act if, when it says that no action shall be entertained by any Court in respect of anything necessarily or reasonably done to give effect to an order of this nature, we should hold that the Civil Court could interfere to restrain the Magistrate from giving effect to his order at all: for that is what is really sought to be done by such a suit. If the Magistrate had carried it into effect, no suit could have been brought against him or against any one acting under his order, and yet it is contended that suit will lie to prevent him from carrying his order into effect."

But though a suit will not lie to prevent any Magistrate from carrying out an order made under S. 133, or for damages on account of anything done by the Magistrate or any other person in carrying out such an order in the manner provided by law, the law does not prevent a person, against whom such an order has been carried into effect, from instituting a suit to prove that land declared by the Magistrate to be a public thoroughfare is his private property. Lalji Ukheda and others *v.* Jowba Dowba and another, 8 Bomb., 94 *App. Civil Jur.:* Mutty Ram Sahoo *v.* Mohi Lall Roy, 7 Cal. L. R., 443.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

(S. 523, para. 4.)

The jury having failed to report within the prescribed time, but having reported subsequently, it was held by the Bombay High Court that the Magistrate was bound to give due weight thereto, and should not have proceeded to enforce his order, at the same time refusing to permit the party concerned to show cause against it under S. 135. The Court remarked that the law evidently contemplates that considerations of justice and equity should form the rule of the Magistrate's conduct in such matters. The exercise of such summary powers requires both experience and discretion in a Magistrate, and a careful consideration of the rights of property.—Dalsukram Haribhai, 2 Bomb., 410.

Injunction pending inquiry.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

(S. 528.)

Sch. V, No. 19 contains the form of an injunction under S. 142.

In BENGAL and in ASSAM the fee of one Rupee has been fixed for an injunction. *Cal. Gaz.* 1879, p. 304; *Assam Gaz.* 1879, p. 596, Wilkins, 82.

When a Magistrate after passing an order under S. 142 ordered a further inquiry to be made by the Police, it was held that he had abandoned that order, and should proceed under S. 133 to call upon the party affected to show cause why the order should not be carried into effect. Brijendro Lall, 20 W. R., 86.

Magistrate may prohibit repetition or continuance of public nuisances.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

(S. 519.)

Sch. V, No. 20 contains a form of the Magistrate's order prohibiting the repetition or continuance of a nuisance.

If any Magistrate, not being empowered by law on that behalf, prohibits the repetition or continuance of a public nuisance, his proceedings are void. S. 530 (*h.*)

The repetition or continuance of a public nuisance, as defined in S. 268, Penal Code, after having been enjoined by a Magistrate under S. 143 of this Code not to repeat or continue it, is punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both. S. 29, Penal Code.

An order under S. 143 is not open to appeal or revision. S. 435.

In BOMBAY, District Superintendents and Assistant District Superintendents of Police have been empowered to act under S. 143. *Gaz.* 1873, p. 439.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

(S. 508.)

Sch. V, No. 21 contains forms of a Magistrate's order under S. 144. The law requires that the written order shall state the material

Ch. XI.

S. 144.

facts of the case, but none of these forms states that in the opinion of the Magistrate immediate prevention for a speedy remedy is desirable, or the grounds for such opinion.

If a Magistrate, not being empowered by law in that behalf, makes an order under S. 144, his proceedings are void. S. 530 (*i.*)

In BENGAL and ASSAM a fee of one Rupee is chargeable for this written order. *Cal. Gaz.* 1879, p. 304: *Assam Gaz.* 1879, p. 596, Wilkins, 82. S. 435, last para., declares that orders under S. 144 are not proceedings within the meaning of that section, that is to say, they are not proceedings, the record of which a superior Court may call for and examine for the purpose of satisfying itself as to the correctness, legality or propriety of the order recorded or passed, and as to the regularity of the proceedings taken. The object is evidently to prevent the exercise of powers of revision by a superior Court. Where an order has been regularly passed under S. 144 the High Court under S. 15 of the Charter Act cannot interfere with it. *In re* Chundernath Sen, I. L. R. 2 Cal., 293; but if the order cannot properly be passed under S. 144 it does not fall within that exception and can be reconsidered. *In re* Krishna Mohun Bysack, 1 Cal. L. R., 58: *In re* Roopchand Parooee, Cal. H. Ct., July 25, 1877.

The High Court can, however, interfere if the order is beyond the Magistrate's jurisdiction, as, for instance, when the order forbids the holding of a certain "hât," and directs its removal to a specified distance from another "hât," for a Magistrate cannot say that a man shall not do what he has clearly a right to do, and pass an order forbidding this for an indefinite period. Shurat Chunder Banerjea *v.* Bama Churn Mookerjea, 4 Cal. L. R., 410.

But though it may not be open to a superior Court on the original proceedings to question the propriety of the order passed, still if a punishment is inflicted for disobedience of that order, the legality of the order may properly be questioned on the trial and determined by the Courts before whom the case may come. Surjee Narain Dass, I. L. R., 6 Cal., 88.

The party aggrieved should either petition the District Magistrate to recall the order, or if that fails he should petition the Government. Seeni Nyna Mohidee, per Turner, *C. J.*, Weir *Sup.* p. 17; see also Mad. H. Ct. Pro. Oct. 30, 1876, Weir, 310, where the High Court refused to interfere with an order under S. 144.

A private individual is not deprived of the redress which the law affords him by means of a Civil suit. Raj Kumar Singh *v.* Sahibzada Roy, I. L. R., 3 Cal., 20, Per Garth, *C. J.*, Jackson, Macpherson, Markby and Ainslie, *JJ.*; Gopi Mohun Moulick *v.* Taramoni Chowdhrain, 4 Cal. L. R., 309, Per Garth, *C. J.* and eleven Judges.

The terms of para. 3 would seem to show that the order cannot ordinarily be made absolute until notice has been given to the person concerned. The object of this is apparently to enable that person to make such representation that he may think fit to induce the Magistrate to recall it and not to enforce it. In cases of emergency or where circumstances do not admit of proper service of the order peremptory obedience to the order may be enforced. See Hari Mohun Mala, 1 B. L. R., 20: Bhyro Dyal Singh, 11 W. R., 46: Rai Luchmeeput Singh, 14 W. R., 17.

The order must have reference to a particular occasion and not for a continuance. Thus an order not to drive cattle between certain hours along certain roads was held to be an illegal order; Mad. H. Ct. Pro. Aug. 17, 1875, Weir, 308: nor can an order relate to a course of conduct or an occupation involving a series of acts done at certain intervals and spread over an interval of time—for instance, an order prohibiting the practice of inoculation was pronounced to be illegal, and a conviction under S. 188, Penal Code, for disobeying it was set aside. Mad. H. Ct. Pro. Feb. 4, 1879, Weir, 310.

It is competent to a Magistrate to issue an order under this section to certain persons in possession and management of a Hindoo temple to widen the door, in order to give the necessary ventilation, and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was open to the Hindu public—Ramchunder Eknath, 6 Bomb., 36, *Crown Cases.*

A Ghosain went forth to pay a visit accompanied by a body of retainers carrying horns which were blown for his glorification, and to the annoyance of another person with whom he was not on good terms. The Magistrate, under S. 144 ordered that neither party should use any musical instruments in the neighbourhood of the house of the other. This order was pronounced by the Calcutta High Court to be open to objection, and was modified, the parties being forbidden to use horns or other musical instruments *for the purpose of mutual offence* in the neighbourhood of each other's house.—Ram Chunder Geer Ghosain, 6 W. R., 40.

S. 144 does not authorise a Magistrate to direct the removal of an embankment in consequence of which adjacent lands are in danger of being flooded. Mad. H. Ct. Pro. Feb. 22, 1870, Weir, 308.

A Magistrate can only order any person to take certain order with certain property in his possession, and is not empowered to pass any order which is irrevocable, such as the cutting down of trees—*In re* Uttam Chunder Chatterjea, 13 W. R., 72; (S. C.) 5 B. L. R., 131; nor is a Magistrate competent to order the owner of a tank in the dry bed of a river to destroy its banks, because they are an obstruction to the public in their lawful enjoyment of the river in the rainy season, and because, by stopping the water, the banks interfere with the drainage of the country, and affect the health of the villagers in the surrounding places, and tend to injure the crops and lessen the value of the land, since the owner of the tank had enjoyed it for six years.—Gholam Durbesh, 10 W. R., 36.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

145. Whenever a District Magistrate, Subdivisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Inquiry as to possession.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Party in possession to retain possession until legally evicted.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

(S. 530.)

Sch. V, No. 22 contains a form of order passed by a Magistrate declaring a party entitled to retain possession of land &c. in dispute.

If any Magistrate not empowered by law in that behalf passes an order under S. 145, his proceedings are void. S. 530 (*j*)

The Magistrate must be satisfied that "a dispute likely to cause a breach of the peace exists concerning any *tangible immoveable property*." This expression is substituted for "any land or any houses, water, fisheries, crops or other produce of land" in S. 530 of the Code of 1872. These last words appeared in S. 318 of the Code of 1861 which again repeated S. 4, Act IV of 1840. Whether this alteration will make any difference in the practice of the Courts will probably form the subject of judicial decision. The cases of Dewan Elahee Newaz Khan *v.* Suburunnissa, 5 W. R. 14; and Sutherland *v.* Crowdy, 18 W. R., 11., (S. C.) 9 B. L. R., 229 may be consulted as expressing contrary views.

In order that the grounds of the Magistrate being satisfied that a dispute likely to induce a breach of the peace exists should be plainly apparent in the proceedings, information must be referred to and facts stated by the Magistrate as facts believed by him to exist, and these should be such as to afford on the face of the proceeding rational grounds for the belief that a dispute likely to induce a breach of the peace exists with regard to certain specified property. In arriving at an opinion, with regard to the facts which the Magistrate in his proceeding states as the ground of his belief, he must form his judgment by the exercise of a judicial discretion upon some sort of materials. The Code does not limit those materials to evidence given on oath; they must only be such as would in their nature justify a judicial officer in relying upon them; unless a Magistrate is in a position to present clear and rational grounds capable of being estimated according to their merits on the mere statement of them, he has no legal foundation on which to base his investigation *inter partes*, relative to possession.—Kishoree Mohun Roy, 19 W. R., 10.

There must be a reasonable apprehension that a disturbance of the peace is likely to occur rendering it necessary for the Magistrate to take immediate action. The High Court considered that the finding in the Magistrate's judgment, that it was probable that a breach of the peace would occur if proceedings were not taken, was not sufficient to give him jurisdiction and accordingly set aside the order passed. Damoodar Biddiadhur Mahapatro, I. L. R, 7 Cal., 385, (S. C.) 8 Cal L. R., 514. See also Chunder Madhub Ghose *v.* Juggesh Chunder Sen, 4 Cal. L R., 483. There must be a present danger of a breach of the peace, not that it will probably be broken at some future time. Uma Churn Shantra, 7 Cal. L. R., 352.

The order in writing would probably be served as a summons under Ss. 68 *et seq.*

"Requiring the parties concerned in such dispute to attend his Court." This is a notice of a specific character to the parties concerned in the dispute, in consequence of which the proceedings have been instituted, and is not a general citation to the public. A third party cannot come in and claim to be made a party. But if the Magistrate is satisfied of the existence of a dispute between him and some of the parties likely to cause a breach of the peace, he can record a preliminary

Ch. XII.
S. 145.

proceeding to that effect and so include him. Raja Koomed Narain Bhoop *v.* Mohim Chunder, 3 Cal. L. R., 551; (S. C.) I. L. R 4 Cal., 650. But if one of the parties dies, the Magistrate should postpone the case and make his representative a party. Where notwithstanding the death of one of the original parties, the Magistrate continued the proceedings, it was held that they were not necessarily bad, as the death had prejudiced no one. Ranee Anandamoyee Dabee, 2 Cal. L R., 264.

The omission to record a preliminary proceeding to the effect that a dispute likely to induce a breach of the peace exists will not invalidate an order passed, unless it can be shown that the party was prejudiced by the omission—Mad. H. Ct., Aug. 9, 1870, Weir, 316 See also Nathu Manickchand, Bom. H. Ct., June 15, 1871. The practice of the Calcutta High Court has almost invariably been to hold that it absolutely invalidates all proceedings subsequently taken as will appear from the following cases ;—(but see Gour Mohun Majee, 22 W R., 81, *contra.*)

The omission to record a proceeding under S. 530 of the Code of 1872, that is, an order in writing under S. 145 of the present Code, is not a mere informality in procedure, which if no substantial injury were done, might be overlooked. The parties may have been, indeed one of them says that he has been, precluded from adducing all his evidence by this very omission. Harvey *v.* Brice, 4 W. R., 26.

A Magistrate has no jurisdiction to inquire into the matter of possession unless he is first satisfied that a breach of the peace is actually likely to occur in reference thereto. He must also record his reasons for being so satisfied. Perhaps it might be immaterial to the validity of the proceeding whether he finally recorded his reasons as required by the Code, but as the inconvenience of a breach of the peace constitutes the substantial ground for his interference being involved at all, it ought to be distinctly adjudicated on by him. Per Phear, *J.* Jackson, *J.* concurred that the proceedings were defective as the Magistrate had not recorded that he was satisfied of the evidence of a dispute likely to occasion a breach of the peace. The proceedings taken were accordingly quashed. Glover *J. dis.* Dewan Elahee Newaz Khan, 5 W. R., 14. See also Amritho Nath Jha, 6 W. R , 6 ; Per Peacock, *C. J.*, Jackson, *J.* where Peacock, *C. J.* seems to suggest that the consent of parties to waive any such objection and to proceedings being taken to put an end to the dispute between them might remedy such an irregularity, but Jackson, *J.* regards the omission to record a proper proceeding as a want of jurisdiction. So also in the case of Musst. Anundee Koer *v.* Ranee Soonaet Koer, 9 W. R., 64, the omission to record a proceeding was held to necessitate the quashing of the award made by the Magistrate. In Kashi Kishore Roy *v.* Tarini Kant Lahory, 3 B. L. R., 76, such an omission was regarded as showing that the Magistrate proceeded without jurisdiction.

The right to collect rents constitutes possession of land under S. 145 which does not necessarily refer to direct possession by actual cultivation. Both the actual cultivator and the person under whom he holds are considered to be in possession of land, and therefore S. 145 applies to a dispute between zemindars whose lands are let out to ryots which dispute relates to possession by exercising the right to collect rents. *In re* Joy Govind Roy, Cal H. Ct. July 26, 1877 following Sonai Sirdar, 25 W. R . 45: See also Hurruck Narain Singh *v.* Luchmi

Bara Roy, 5 Cal. L. R., 287; Sutherland *v.* Crowdy, 18 W. R., 11; Muddoosodun Shaha, 21 W. R., 55. Ch. XII.

S. 145.

In MADRAS, however, the contrary practice apparently exists, for it has been held that constructive possession through tenants is not such a possession as is contemplated by S. 145. 4 Mad. xii *App.* Pro. May 15, 1869:—also Pro. July 13, 1868.

A dispute between a zemindar and his lessee regarding the right to collect rent is not within S. 145. Mad. H. Ct Feb. 11, 1873, Weir, 317; nor a disputes regarding shares in joint undivided property, Cal. H. Ct., 420, 1863. Such a matter should be dealt with under Reg. (Bengal) V of 1812 S. 20 as modified by Reg. (Bengal) V of 1827; Goluk Chunder Roy, 17 W. R., 33: Ramrunginee Dassee, 18 W. R., 36: nor can a dispute regarding the amount of the share of the crop payable by the ryot be dealt with under S. 146. 4 Mad. xii *App.* Pro. July 13, 1868.

The fact that a certain party has obtained a certificate under Act XXVII of 1860 to collect debts due to a deceased person is not in itself conclusive proof of possession—Geerjamonee, Suth. Rep., 1864, p. 2. Nor does it entitle the holder to be put into possession of any property of the deceased person.—Seetaram Sahoo, 18 W. R., 35. Nor is a Magistrate justified by reason of the passing of such an order to interfere with the previous possession of another. The Civil Court should rather execute its own order.—Mohunt Dhanraj Giri Ghosami, 2 B. L. R., 27.

A Magistrate is bound to maintain possession given by a Civil Court, and not to make it necessary that a successful party should again have recourse to the same Court to recover what has already been given to him. Bholanath Ghose, 7 Cal. L. R, 516: Rai Mohun Rai *v.* J. P. Wise, 16 W. R. 24: Raneegunge Coal Association (Limited) *v.* Hera Lall Ghosamee, 24 W. R., 7: Sonai Sircar, 25 W. R., 46.

Similarly when the Code of Civil Procedure provides a remedy for persons objecting to orders passed by a Civil Court, the Magistrate should not interfere but should maintain the orders of that Court, referring any parties who may object to them to that Court for their remedy. Thus when possession of certain property was given by the Nazir of a Civil Court in execution of a decree, the objecting party should be referred to that Court and the Magistrate should decline to take cognizance of the dispute—*In re* Chatterput Singh, 5 Cal. L. R., 200: so also when a purchaser under a decree is resisted in getting actual possession of the property bought, the Magistrate should not interfere but should refer the purchaser to the Court.—Pryag Singh, 6 Cal. L. R., 206.

The fact that proceedings under the Bengal Land Registration Act are pending should make a Magistrate extremely careful not to make any order under S. 145, unless he is quite satisfied of the existence of a *bonâ fide* dispute, and that a breach of the peace is imminent. As the Magistrate knew that those proceedings only awaited formal completion, he should not have proceeded under S. 145. If he thought that a breach of the peace was imminent, he should have bound down the principal parties to keep the peace. Govind Chunder Moitro, I. L. R., 6 Cal., 835: (S. C.) 8 Cal. L. R, 217.

Evidence in cases under S. 145 should be recorded as in warrant cases in the manner prescribed by S 356.

A Magistrate is bound to examine any witnesses who are tendered

Ch. XII.

S. 145.

by the parties in support of the respective claims to possession of the land in dispute.—6 Mad., iv, *App.*, Pro., Nov. 28, 1870.

S. 350 enables a Magistrate to act on evidence recorded by his predecessor in office as proceedings under S. 146 are an injury as defined by S. 4 (*c*).

When a person has been forcibly dispossessed of immoveable property, he can either bring a charge of a criminal offence and on conviction of his adversary he can obtain an order from the Court to be restored to the possession of that property (S. 522) ; or if he has been dispossessed without his consent and without due course of law he can institute a summary suit in a Civil Court within six months of the dispossession. Specific Relief Act, I of 1877, S. 9.

There must be some evidence from which the Magistrate may reasonably and fairly draw the conclusion of fact necessary in the case, and not merely on grounds derived from his own moral consciousness. Mad. H. Ct., May 15, 1869. Weir, 313.

The lands should be sufficiently identified in the order for possession, otherwise the order will be inoperative and only lead to injurious consequences. *In re* Sewarut Tewary, Cal. H. Ct., April 5, 1879.

The possession which a Magistrate is to find and support, is possession at the time of the institution of the proceedings and not possession at the time of his passing final orders in the matter. Prithiram Chowdhry Rai Bahadoor, 20 W. R , 51. If it should appear that any person has been turned out of possession and has submitted to the ouster and the other party whether rightly or wrongly is in peaceable possession he should be retained in possession. But the mere fact of seizure and occupation of land while complaints are being made to the Police and proceedings are being held by the Criminal Courts cannot be said to be such peaceful possession as the Magistrate is bound to look to and maintain. A man cannot give himself a title to the aid of the Magistrate by his own wrong doing, except so far as it can be said to have been acquiesced in and to have gained for him the position of a peaceful occupant. *In re* Bunwaree Misser, 1 Cal L. R., 136. A party who has been forcibly dispossessed has, as has already been pointed out, his remedy in the Criminal Courts on conviction of the person who has dispossessed him (S. 522) and in the Civil Courts under S. 9 Specific Relief Act, I of 1877, S. 72) but it is doubtful whether the Magistrate under S. 145 can look to the manner in which possession existing at the time of those proceedings was acquired.

Although a Magistrate cannot decide a matter under S. 145 on evidence of title, he may use such evidence merely to guide and assist his mind in coming to a decision on the question of possession. Evidence of title may supplement direct evidence of possession, but it cannot, standing alone, be proof of possession. If there is substantial evidence of possession or a conflict of evidence on that point, a Magistrate is justified at looking at the evidence of title in combination with evidence of possession. *In re* Kali Krishto Thakur, 8 Cal. L. R., 245 ; (S. C.) I. L. R , 7 Cal., 46.

It will be observed that S. 145 enables certain Magistrates to interfere when they are "satisfied that a dispute likely to induce a breach of the peace exists concerning any tangible immoveable property or *the boundaries of any land.*" In the North-Western Provinces of Bengal, this provision regarding boundary disputes will be almost inoperative, since

Act I, 1847, S. 6, declares that Magistrates are prohibited from taking cognizance of boundary disputes of the nature therein provided for; but it further enacts that whenever any Magistrate has reason to apprehend any breach of the peace in consequence of a disputed boundary, he shall certify the circumstance to the Collector of Land Revenue, who shall be bound immediately to mark off the boundary in the manner indicated by that Act, and to uphold the possession of the parties according to the demarcation.

It should be noted that S. 535 of the Code of 1872 declared that no order under S. 530 of that Code (now re-enacted in S. 145) shall affect the power of a Collector or a person exercising the powers of a Collector or of a Revenue Court. S. 525 has not expressly been re-enacted but S. 1, para. 2 of this Code declares that in the absence of any specific provisions to the contrary nothing contained in this Code shall affect any special or local law or any special jurisdiction or power conferred by any law now in force, so that the powers of a Collector are saved and cannot be interfered with.

An order under S. 145 declares that a certain person shall be entitled to retain possession of the particular immoveable property until evicted in due course by law. A suit to set it aside brought by a person bound by an order under S. 145 must be brought within three years from the date of the passing of the final order in the case. Limitation Act (XV of 1877) Sch. II, Art. 47.

Power to attach subject of dispute.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(S. 531.)

Sch. V, No. 23 gives the form of a warrant of attachment under this section.

If a Magistrate not being empowered by law in that behalf passes any order under this chapter his proceedings are void. S. 530 (*j*).

It is only when after instituting a proceeding under S. 145, and taking evidence a Magistrate finds that neither party is in possession or that he is unable to satisfy himself as to which of them is in possession of the subject of dispute that he can attach the immoveable property. Ram Soonder Debee, 1 Cal. L. R., 86; In the matter of Leelanund Singh, 1 Cal. L. R., 273; Mad., H. Ct. Pro., Nov. 28, 1870, Weir, 318.

A Magistrate, after notices issued under S. 145 to two parties, finding himself unable to determine who was in possession, attached the property in dispute under S. 146. On this, a third party represented that he, as landlord, had taken possession on the death of the person to whom it had been leased. The Magistrate observed that the death of a holder of a tenure which was not transferable does not necessarily imply assumption of possession by the landlord, and he apparently inferred that the landlord's possession was without colour of law, for he

Ch. XII.

S. 147.

held that the attachment under S. 146 signified that the Government had stepped into the position of the late owner, as trustee, and was bound to pay rent for the tenure. The High Court held that it was the duty of the Magistrate to have withdrawn his order under S. 146, if he found that the landlord was actually in possession of the land, and that order was set aside.—Joy Kissen Mookerjea, 24 W. R., 40.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Disputes concerning easements, &c.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons unless the right has been exercised during the season next before such institution.

(S. 532.)

Sch. V, No. 24 contains a form of order under S. 147, prohibiting the doing of anything on land or water.

If any Magistrate not being duly empowered by law on that behalf passes an order under S. 147 his proceedings are void. S. 530 (*j.*)

S. 147 professes generally to re-enact S. 532 of the Code of 1872 the terms of which are in more familiar language and describe the dispute to be "concerning the right of use of any land or water or any right of way." These terms have been used by the Legislature since Act IV of 1840 but are now replaced by language which may not generally be intelligible. The law, however, has been altered in that, proceedings under S. 147 cannot be taken unless the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists whereas the existence of a dispute was sufficient under the now repealed law which reproduced the law since 1840. This alteration will prevent Magistrates trying whether a right of way made the subject of an order

under S. 133 is public or private on objection raised that it is private. See in the matter of Chondronath Sen, I. L. R., 5 Cal., 875, (S. C.) 5 Cal., L. R., 579: Roy Omesh Chunder Sen, 21 W. R., 67; Weir, 304, 305.

The alteration of the language at the end of this section is also important. S. 532 concluded thus—"unless such right has been exercised during the last of such seasons before the complaint" whereas S. 147 provides, "unless the right has been so exercised during the season next before such institution." It not unfrequently happens that a right is not exercised annually but during exceptional seasons; such cases would no longer be cognizable under S. 147.

A dispute regarding the obstruction of a drain into which the sewage of certain premises fell is not a matter to be adjudicated under S. 147.—Troylokhyonath Bose, 5 W. R., 58.

Because a person has another means of ingress, and egress, a Magistrate should not order that he should not make use of one passing through another person's land. A Magistrate is bound to inquire into and decide when the latter road was open to use in the manner specified in S. 147.—Troylokhyanath Sircar, 2 W. R., 64.

A right of way, or a right to the flow of water across the land of another, is a right of use of land within the meaning of S. 147.—Mad. H. Ct., Feb. 18, 21, 1867, Weir, 304, 305; June 1, 1868, Weir, 318. Because some of the parties set up the right to use at all times would not preclude a Magistrate from finding that they had the lesser right to use in the way at particular seasons. The jurisdiction given by S 147 to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time.—4 Mad., xxiv, *App*, Pro., Jan. 4, 1869. (S. C.), Weir, 319.

S. 147 does not enable a Magistrate to pass a purely declaratory order. It enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public or a person or class of persons. In the matter of the Maharaja of Burdwan, I. L. R., 5 Cal., 194: (S. C.) 4 Cal, L. R., 324.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the persons so deputed may be read as evidence in the case.

Ch. XIII.

Ss. 149, 150.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

(S. 533.)

A local inquiry under this chapter can be held only by a Magistrate and his report under S. 148 is evidence in the case.

When an inquiry under S. 148 is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it and to have an opportunity of rebutting the deputed Magistrate's report, if he thinks necessary to do so.—Meer Dhunnoo, 21 W. R., 25.

The last para. regarding the payment of costs is new. Ss. 386, 387 provide for the realisation of fines.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE

Police to prevent cognizable offences.

149. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

(S. 95.)

This duty may be performed without reference to local jurisdiction, and if otherwise unable to prevent the offence, the Police officer may arrest the offender (S. 151). His further action should be regulated by S. 60. An officer in charge of a Police station can proceed to investigate into such offences only when they have been committed within the limits of such station (except under any of the special circumstances stated in Ss. 179—188. See S. 156). He should, however, when a complaint is made to him, reduce such to writing and enter the substance thereof in the diary whether the occurrence which is the subject of the complaint or information took place within his jurisdiction or not.—Bengal Police Circular.

Information of design to commit such offences.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subor-

dinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

(S. 96.)

Arrest to prevent such offence.

151. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(S. 97.)

Prevention of injury to public property.

152. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

(S. 98, para. 1.)

These acts are punishable under Ss. 430—434, Penal Code. If such injury or removal be done in opposition to the Police officer, he can, under S. 54, cl. v, arrest the offender, but for all the offences mentioned except for that punishable under S. 434, Penal Code, the offender can be arrested without a warrant, so that if any of these acts be committed in the sight of the Police officer, he can immediately arrest the perpetrator, otherwise he should proceed under S. 24, Act V of 1861.

Inspection of weights and measures.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

(S. 381.)

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Police officers superior in rank to officers in charge of a Police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by officers in charge of Police stations within the limits of their respective stations. S. 550.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

(S. 112.)

An information to a Police officer should not be made on oath. If it is false, it cannot, therefore, be made the subject of a charge under S. 193, Penal Code, but it might come under S. 182 or 211.—Calcutta Sudder Court, 324, 1862. See also Subbana Gaundan, 1 Mad., 30; Bonomalee Sahai, 5 W. R, 32.

The complaint or information reduced to writing forms part of the first information report. The diary in which the substance of the complaint is to be entered is the station diary kept under S. 44, Act V, 1861.

Any Criminal Court may send for Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it on such inquiry or trial, but neither the accused nor his agents shall be entitled to call for them nor shall have they be entitled to see them merely because they are referred to by the Court, but if they are used by the Police officer to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer the provisions of the Indian Evidence Act, 1872, Sections 145, 16, shall apply. S. 172.

The wilful giving false information with intent to cause a public servant to use his lawful power to the injury of another person is an offence punishable under S. 182, Penal Code.

If the person giving the information shall refuse to sign the statement made by him, when required to sign that statement by the Police officer, he shall be punished with simple imprisonment which may extend to three months, or with fine which may extend to five hundred Rupees or with both. S. 180, Penal Code.

The following form of a first-information report has been prescribed for the Bengal Police.

The first information of a cognizable crime reported at Police Station Subdistrict . under Section 154 of the Criminal Procedure Code.

1	2	3	4	5	6
Date and hour of receipt at Police station of first information.	Name of informant and parties concerned.	Crime reported, and value and details of property stolen.	Date of occurrence of the crime.	Place of occurrence, direction and distance from Police station.	Steps taken by officer in charge of station.

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Information in non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

(Ss. 110, 113.)

If a Magistrate not empowered by law erroneously in good faith orders a Police officer under S. 155 to investigate a non-cognizable case the proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*b*).

Ch. XIV. —— Ss. 156, 157.

A complaint to the Police, or to heads of villages or the village Police, in Madras or Bombay, if presented by written petition, may be on plain paper.—Act VII, 1870. S. 19, Cl. xvi. When petty complaints are made to a Police station, the usual first-information-report should be submitted with a remark to the effect that no inquiry has been made. The number of these cases will be noted in the column of remarks attached to the District Monthly Return of Crime. In these cases no final report need be sent. They should be entered on its monthly return as true cases in which no person charged and no arrest is made.—Ben. Pol. Cir. 38, 1867; 4, 1868.

Investigation includes all proceedings under this Code for the collection of evidence conducted by the Police or by any other person other than a Magistrate or a Police officer who is authorized by the Magistrate on that behalf. S. 4 (*b*).

A Police officer can arrest a person for a non-cognizable offence only when it is committed in his presence by a person who refuses to give his name and residence or gives a name and residence which the Police officer has reason to believe is false. S. 57.

Investigation into cognizable cases.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of injury or trial.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(Ss. 109, 114.)

Thus, an officer in charge of a Police station within whose local jurisdiction a person is who has been charged with being a thief, or with being a thug and committing murder, or with dacoity, or with dacoity with murder, or with having belonged to a gang of dacoits, or with having escaped from custody, may investigate the offence although it may have been committed beyond the local jurisdiction. S. 181. So also with regard to a theft, if any of the property stolen was possessed by the thief, or by any person who received or retained it knowing, or having reason to believe it to be stolen, within his local jurisdiction, (S. 181), or when the place of the commission of the cognizable offence is doubtful or it has been committed partly in his and partly in another local jurisdiction (S. 182): or the cognizable offence has been committed in the course of performing a journey or voyage, and the offender or the person against whom, or the thing in respect of which, that offence was committed passed through or into his local jurisdiction in the course of that journey or voyage. S. 183.

Procedure where cognizable offence suspected.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the

commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided as follows:—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where Police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

(Ss. 114, 116, 117.)

"Magistrate empowered to take cognizance of such offence upon a Police report." This would be any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate and any other Magistrate specially empowered in that behalf by the local Government or by the District Magistrate. S. 191.

S. 157 of the Code of Criminal Procedure requires that immediate intimation of every complaint or information preferred to an officer in charge of a Police-station of the commission of a cognizable offence be sent to the Magistrate having jurisdiction. The object of this provision is obvious, and it involves more than a mere technical compliance with the law. The Magistrate is primarily responsible for the condition of the District as regards repressible crime, and he is not at liberty to divest himself of that responsibility or to relax that supervision over crime which the law intends that he should exercise. It is his duty to know and consider each cognizable case as soon after its occurrence as possible. He should not rest content with reading the *challan* when the case comes

Ch. XIV. — Ss. 158, 159.

up for trial, but he should watch the various steps taken by the Police and advise them in all cases whenever it may be necessary.

Moreover, it is for the Magistrate, by the continuous study of diaries, to acquaint himself with what is going on of the salient and special kind referred to in the Code as matters for his attention and possible interference. It is for the Police to keep the Magistrate constantly informed of them.—Panj. Ct. Cir., x. 171, 26th May, 1869. Smyth, p. 83.

S. 159 declares how a Magistrate shall proceed on receipt of such a report.

Reports under section 157 how submitted.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

(S. 117.)

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

(S. 115.)

If a Magistrate acting under S. 159 proceeds to hold the inquiry regarding the commission of an offence, and subsequently tries the case, it is most important that he should bear in mind the observations of the Calcutta High Court (*per* Phear, J.) in the case of Hurro Chunder Pal and others (20 W. R., 76) to the following effect:

"The Deputy Magistrate states: 'In this, as in that case, I was the chief actor and investigator. I have in this, as in that, to separate, and so far as in me lies to banish from the record, and if it were possible, from my own recollection facts which I have seen and known, and confine myself strictly to the evidence on the record. In fact, I have to do that most difficult of all things—to, as it were, change my identity, and speak, write, and think, not in the first, but third person.'

"What was the particular obligation under which the Deputy Magistrate supposed himself to have laboured, and which constrained

him to 'change,' as he says, 'his identity,' it is perhaps difficult to understand. It has been held by this Court, and is accordant with the general principles which govern the conduct of an English Court of Criminal Justice, that while a person is not necessarily disqualified from presiding as a Judge or acting as a juryman upon an inquiry into or investigation of facts, because he may have been himself a witness of some of the facts which are the subject of the inquiry or investigation, if he does do so, he, so far from being under any such obligation as that which the Deputy Magistrate seems to have referred to, is bound to state to the prisoner or other person concerned, or to make known to him, so far as he can, what are the facts which he himself observed, to which he himself can bear testimony. And, moreover, the prisoner, who is being tried by a Judge in this situation, has a right, if he thinks it desirable, to cross-examine the Judge, who, under these circumstances, and to this extent, must be viewed as a witness, and his evidence should be recorded. It is quite erroneous, in our opinion, to suppose, on the contrary, as the Deputy Magistrate appears to have supposed, that he was bound to keep out of sight altogether the part which he had played in the matter and to pretend (we cannot use any other word than that) that he knew nothing about the facts excepting so much as the witnesses told him in Court. It is always dangerous for any man in whose right conduct others are concerned to set up and endeavour to carry out a fiction such as this. It is most specially dangerous for a Judge, who is under the grave responsibility which attaches to the office of a criminal Judge, to attempt anything of the kind. The Deputy Magistrate, if he thought it right, as he did, to take upon himself the duty of trying the prisoners in this case, ought to have made no pretence whatever of any sort; he ought to have frankly avoided and openly stated in his Court all the part which he had taken, and the facts which he had observed, and made his own evidence part of the record in the case. The awkwardness of a criminal Judge being the principal witness in the case which he has to try, is no doubt most apparent; this, however, is a reason for his declining to try the case, not for his endeavouring to assume an unreal character."

The proceedings, if held by a Magistrate, would not be an investigation within the terms of the definition given in S. 4 (*b*) but would be an inquiry (*c*) or a trial. The nature of the proceedings held by a subordinate Magistrate would apparently depend on the terms of the order passed by the Magistrate who received the Police report.

Police-officer's power to require attendance of witnesses.

160. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

(S. 118.)

The persons so ordered to attend are bound to attend to the order; but in no case, can a Police-officer compel a witness by force to attend before him.—Behari Singh, 7 W. R., 3.

Disobedience should be reported to the Magistrate, by whom it is punishable under S. 174, Penal Code.—Ben Pol. Cir., 19, 1867.

Police officers, when causing the attendance of Railway employees, must send immediate information to the Head of the Department under whom such persons are serving.—Ben. Govt., 6355, November 13, 1865. Probably in such cases the rule laid down in the proviso to S. 72 would be followed.

Examination of witnesses by police.

161. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(Ss. 118, 119, 121.)

The person who gives information of a cognizable offence at the Police-station is bound to sign his statement when reduced to writing (S. 154), but no other statement if reduced to writing shall be signed by the person making it (S. 162). An examination by a Police officer would not be on oath or affirmation.

S. 161 declares that any person examined by a Police officer making an investigation shall be *bound to answer truly* all questions relating to the case put to him other than questions likely to criminate himself. If therefore he answers falsely he commits the offence of intentionally giving false evidence as defined in S. 191, Penal Code This is an amendment of the previously existing law under which it was held that it was not obligatory on a person under examination by a Police officer to tell the truth. See *In re* Karim Khan, 8 Cal. L. R., 300.

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

(Ss. 119, para. 3; S. 121.)

The information on which the investigation proceeded must be reduced to writing and signed by the person giving it (S. 154), and a dying declaration made to a Police-officer in the course of an investigation if reduced to writing should also be signed by the declarant whenever possible (S. 162), but no other statement made to a Police officer, if reduced to writing, shall be signed by the person making it. If any such statements are reduced to writing they are regarded as private memoranda to aid the Police in the cause of the investigation, but though such a statement may not be used against the accused, it may be used against him should he be charged with having intentionally given false evidence (see note to S. 161). The investigating Police-officer when under examination as a witness may moreover refer to any such statement for the purpose of refreshing his memory (S. 159 Evidence Act) in which case the statement must be produced and shown to the adverse party if he requires it, and may be made the subject of cross-examination (S. 161). But such statement in writing could not be used to contradict any witness who made it to a Police officer (S. 157) because that would be using it as evidence against the accused.

Where a witness before a Court contradicts his statements previously made to the Police, the accused is entitled to cross-examine him with respect to his former statements: if he denies it, he may be be contradicted: and one of the ways in which he may be contradicted is by calling the Police officer before whom he made that statement who may refresh his memory from his diary (or any statement of the witness reduced by the Police officer to writing.) But the prisoner has no right to insist that the Diary (or such statement) not in Court shall be sent for, or, if it be in Court, that it shall be referred to for the purpose of refreshing the memory of the Police officer A witness cannot be compelled to refresh his memory from any document, unless it is in the possession of the party who desires to put it to the witness, or is, at least, such as he can insist on having produced. *In re* Kali Churn Chumari, 10 Cal. L. R, 51; (S. C.) I. L. R, 8 Cal. 156.

But when a statement is not reduced to writing, it is not inadmissible as evidence since the law does not profess to provide for such a case. The Police officer may therefore be questioned as to such statement by the pleader for the defence, as also any other person who may have heard it made. And even when it is reduced to writing the law does not say that the Police officer or such other person shall not be liable to be questioned regarding it, or bound to state the truth when so questioned, but that the statement so reduced to writing shall not be used as evidence against the accused. Consequently the Police officer and such other person, if any, continue as liable to be questioned with regard to such statement as they were before the enactment of the prohibition, and may make use of such writing to refresh their memories..... This is not inconsistent with S. 91 of the Evidence Act as the statement made to the Police officer is not a matter required by law to be "reduced to the form of a document," so as, under that section to exclude out evidence thereof from the mouth of the Police officer, or such other person. Uttamchand Kapurchand, 11 Bomb., 120.

A dying declaration must be taken in the presence of the accused person to be admissible as evidence: if not so taken it must be proved in the ordinary way by some one who heard it made, and the writing

Ch. XIV. — S. 163.

may be used for the purpose of refreshing the witness's memory.—Samiruddin, I. L. R., 8 Cal., 211.

S. 27 of the Evidence Act declares that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved.

No inducement to be offered.

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

(Ss. 120, 184.)

The following sections of the Evidence Act (I, 1872), are of importance in connection with this section:

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. No confession made to a Police officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely beause it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned

that he was not bound to make such confession, and that evidence of it might be given against him.

The High Court has held that the mere standing by of a Magistrate when confessions are being made to and recorded by the Police for their own use, will not make those confessions evidence, for S. 26 refers to cases where the Magistrate is himself conducting the investigation, and then, although the prisoner may be in the custody of the Police at the time, such prisoner, making a confession, is liable to have that confession used against him.—Domun Kahar, 12 W. R., 82.

Obtaining a disclosure or confession, by hurt, grievous hurt or criminal intimidation is punishable under Ss. 330, 331, 506, Penal Code.

In all cases where the Police are accused of extorting confessions or maltreating persons arrested, the District Superintendent will immediately proceed to the spot and thoroughly investigate the matter, reporting the circumstances fully, not only to the District Magistrate, but to the Inspector-General of Police and the Deputy Inspector-General of the Circle. Should it appear that there is any foundation for the charge, the Deputy Inspector-General will lose no time in proceeding to the District in which the occurrence has taken place, and reporting the action of the superior officers of Police in the matter.—Ben. Pol. Cir., 60, 1865.

In the case of Dhurmo Dutt Ojha (8 W. R., 13,) it appeared that the prisoners confessed on being told by the Police officer that he would get them released if they told the truth. The Calcutta High Court severely condemned such conduct as highly improper and illegal, holding that no part of the Police officer's evidence as to the discovery of facts in consequence of the confessions was legally admissible. See also Bechoo Manjee, 9 W. R., 16.

The following judgment of the Calcutta High Court states the the law regarding the admissibility of statements made to the Police—(Nobodeep Chunder Ghosamee and another, 1 B. L. R., 15, *Original Side, Criminal.*)

"PEACOCK, C. J.—Upon the questions argued before us I entertain no doubt.

"The first relates to the answer given to the Police constable when he arrested the prisoner. The answer did not amount to a confession of guilt, but was a statement of facts, which, if true, showed that the prisoner was innocent. It is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible in evidence is, that it was made in answer to a question put by the Police officer.

"The cases upon this subject in England are conflicting, but the later cases seem to show that statements made by a prisoner in answer to a question put by a Police-officer are admissible in evidence. In the case of R. *v.* Beriman, 6 Cox, C. C., 388, Erle, C. J., refused to admit as evidence an answer given by a prisoner to a question put to him by a Magistrate; and a similar ruling by Wilde, C. J., is to be found in the case of R. *v.* Petitt, 4 Cox. C. C., 164. But in a later case, the Queen *v.* Cheverton, 2 F. & F., 833, Erle, C. J., admitted as evidence against the prisoner a statement which she had made in answer to questions put to her by a Police officer. In that case it appeared that Baxter, the Police officer, had said to the prisoner, 'you had better tell all about it, it will save trouble;' and then put certain questions to the

Ch. XIV.

S. 163.

prisoner, which she answered. It was held that the answers given to Baxter were inadmissible, because they had been made under the influence of something in the nature of a threat or inducement. Afterwards, another Policeman put questions to the prisoner, which she answered, and it was objected that those answers were inadmissible, as they had been made under the inducement held out by the former Police officer. Erle, C. J., after consulting Wightman, J., admitted the statements made to the second Police officer, holding, as I suppose, that the answers were not given in consequence of the inducement held out by the first officer. That is a distinct authority that statements made by a prisoner in answer to questions put by a Police officer are admissible; and it may be remarked that in that case the answers were held to be admissible, though the prisoner had not been cautioned.

"In the case of R. *v.* Mick, 3 F. F., 342, it was held by Miller, J., that the confession made by a prisoner in answer to a question put to him by a Police officer was admissible. A similar decision will be found in 1 Moody, C. C., 27, in which it was held that a confession obtained without threat or promise from a boy, fourteen years old, by questions put to him by a Police officer, in whose custody the boy was on a charge of felony, and when the boy had had no food for nearly a whole day, was properly received as evidence against him. That was held by six Judges to three upon a point reserved. The majority held that the confession was rightly received, as no threat or promise had been made.

"Miller, J., in the case of R. *v.* Mick, to which I have referred, remarked that many Judges would not receive the evidence, and that he highly disapproved of the course the Police officer had taken in asking questions.

"Having these conflicting decisions before us, I should be disposed to act upon the decisions given in the case reserved, even if it were not borne out by every principle of common sense. If an inducement is held out to a prisoner to make a confession, by telling him he will be better off if he makes a confession, he may be induced, if he knows that circumstances are strong to lead to a presumption of guilt, to make a confession, though he is innocent.

"There may be reasonable ground against the admission of such a confession, though perhaps it would be better to admit it, and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it.

"The object of the Criminal Law is to punish the guilty, for the purpose of deterring them and others from committing offences. The object of the Law of Procedure, including the Law of Evidence, is, or ought to be, that the innocent shall be protected, and the guilty punished. I cannot, therefore, at all agree with the remarks of Miller, J., and in the expression of his disapproval of the conduct of the Police officer in asking questions, provided he does not hold out hope or fear as an inducement to confess.

"Some cases have gone to the extent of saying that a statement is not admissible if it is obtained by telling the prisoner he had better tell the truth. For my own part, I cannot see any objection to telling every man that he had better tell the truth; but that is very different from telling a man that he had better confess, when you do not know whether he is innocent or guilty.

"Though it has been held in some cases that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England—and I believe without a dissentient voice—that confessions obtained by artifice or deception are admissible. Therefore, where a confession was obtained by a person who took an oath that he would never mention what the prisoner told him, the statement made when disclosed was held to be admissible; so where it appeared that one of the prisoners had made a statement to a constable whilst he was drunk, and it was imputed to the constable that had given him liquor to cause him to do so, the statement was held to be admissible evidence against the statement not having been made under the inducement of hope or fear. See the cases collected in Roscoe on Evidence in Criminal Cases, 47. It is high time, I think, that we should decide according to principles which are founded in reason and good sense. I therefore hold that what the prisoner said in answer to questions put to him by the Police officer was admissible, no threat or deception having been used or any false hope held out."

The law in this respect was also discussed by the Bombay High Court in the case of Reg. *v.* Navroji Dadabhai, 9, Bomb. 358 where the question of how far a person was "in authority" over the confessing person came also under consideration. Sarjent, C. J. said: The test would seem to be, had the person authority to interfere in the matter; and any concern or interest in it would appear to be sufficient to give him that authority as in the *Queen v* Warningham (2 Den. C. C. 447 *n*) where Baron Parke held that the wife of one of the prosecutors and concerned in the management of their business was a person in authority, and the rule is so laid down in Archbold's Criminal Practice.

Power to record statement and confessions.

164. Any Magistrate not being a Police officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

Ch. XIV.

S. 164.

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

"*(Signed)* A. B.,

"*Magistrate.*"

(S. 122.)

The terms 'any Magistrate,' must be restricted to any person exercising any of the powers of a Magistrate within the particular place where the statement or confession is recorded. Thus a Magistrate having jurisdiction in the Suburbs of Calcutta was held to have no jurisdiction to act under S. 164 in Calcutta.—Hurribole Chunder Ghose, I. L. R., 1 Cal., 207.

S. 164 applies to a case in which some Magistrate takes a confession and forwards it to the Magistrate by whom the inquiry or trial is held, and not to a confession taken by the Magistrate who is conducting the inquiry and examining the witnesses preparatory to commitment.—Jetoo and others, 23 W. R., 16. The fact that it may afterwards be the duty of a Magistrate to hold the inquiry under chapter XVIII, does not prevent him from recording the statement of an accused person under S. 164. Bomb. H. Ct. *Resn. in Chambers*, March 31, 1877. It is not because a case is still under Police investigation, and the final report has not been sent in, that a confession recorded by a Magistrate must be recorded under S. 164 and not under S. 364. If the Magistrate who records such a confession has authority to hold the inquiry or trial without any order from a superior Magistrate (S. 192) the confession would be the commencement of the inquiry or trial and would therefore be recorded under S. 364 rather than under S. 164. Krishno Monee, 6 Cal. L. R., 289: Anunt Ram Singh and others I. L. R., 5 Cal., 954 (*Full Bench*).

The practice of taking prisoners before Magistrates not having jurisdiction in the case for the purpose of getting a confession recorded is not generally desirable, but such a confession is legally admissible.—Vahala Jetha, 7 Bom, 56, *Crown Cases.*

It is not necessary to caution an accused person before recording his statement.—5 Mad. xi, *App.*, Pro. Dec. 9, 1869.

The Police officer who brought the prisoner should not be present while a confession is taken, nor should he be allowed to suggest questions to be put. Though a confession so taken would be admissible as evidence, a Court would not attach much weight to it, as such a course suggests that the Magistrate was not conducting the inquiry himself.—Cal. H. Ct., Cir. 7, July 30, 1873.

A Magistrate should especially record the circumstances under which a confession taken under S. 122 was made, and under whose custody the person was at the time.—Bom. H. Ct., Circular, 257.

S. 164 declares that a confession recorded by a Magistrate under its provisions "shall be recorded and signed in the manner provided by S. 364." S. 364 requires that the whole of the examination including

every question put and every answer given shall be recorded in full, in the language in which the accused is examined, or, if that is not practicable, in the language of the Court or English, and that such record shall be shown or read to the accused, or if he does not understand the language in which it is written, that it shall be interpreted to him in a language which he understands, the accused being at liberty to explain or add to his answers—that when the whole is made conformable to what the accused declares to be the truth, the record shall be signed by the accused and by the Magistrate or Judge who shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

Any omission on the part of a Magistrate to comply fully with the provisions of section 164 or section 364 may be cured by taking evidence that such person duly made the statement recorded; and notwithstanding anything contained in the Indian Evidence Act S. 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits. S. 533. This section supersedes the effect of many judgments of the several High Courts which have distinguished between confessions recorded under S. 164 and under S. 364, and have laid down that an omission to comply with a confession of the former nature cannot be remedied by evidence subsequently taken.

The reason for requiring the signature of an accused person to the record of his confession is probably to furnish a new and strong test whether the confession was voluntary and free from controlling influences, and to afford him a *locus pœnitentiæ*—an ultimate opportunity, before the final completion of the record, of indicating that the confession was not voluntary, or was made under improper influence, if such were the case, and also an additional opportunity of denying the accuracy of the record of that confession. . . . . The error of the Magistrate in omitting to ask her to sign was, having regard to the probable intention of the Legislature in requiring the signature of the accused, of such a nature as may have seriously prejudiced her, and, therefore, this imperfect record of the confession is inadmissible in evidence against her.—Bai Ratan, 10 Bomb, 366. (S. 533 of this Code would now probably provide a remedy for this omission.)

The Magistrate or Court before which such statement or confession shall come shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement or confession was duly taken.—S. 80, Act I, 1872.

As the village headman in MADRAS is a village servant employed on Police duties (Act IV, (Madras) 1864, S. 7) he would no longer be competent to record a confession under S. 164 which requires the officer recording a statement or confession to be a Magistrate not being a Police officer. The alteration in the law has therefore superseded the orders contained in 4 Mad. ii *App.* Pro. Feb. 14, 1868; Pro. July 7, 1869, 8 Mad. Jur., 149.

Search by Police-officer.

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the

Ch. XIV.
S. 165.

production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

(S. 379.)

Except under special circumstances the search must be made between sunrise and sunset. If for any reason this rule be not observed, the fact must be reported to the District Superintendent for the information of the Magistrate having jurisdiction. If a search is required in any place within the limits of another station, it can be made only through the officer in charge of the latter, on the requisition, oral or written, of the former—Bengal Police Circular.

Bengal Police officers in charge of Police stations in Bengal may also institute searches for contraband salt, &c.—Act VII (B. C.), 1864.

Any Police officer, above the rank of a head constable, may institute a search for excisable articles liable to confiscation.—Act VII (Bengal Council) 1878. S. 40.

Police officers of all grades may, without a warrant, enter and inspect (1) any drinking shop, gaming-house, or other place of loose and disorderly characters (Act V, 1861, S. 23); (2) any salt work or any warehouse or any premises in which salt is stored (Act VII, (B. C.), 1864, S. 23); any shop or premises of licensed manufacturers and retail

vendors of excisable articles.—Section 37.—Special provision is also made by S. 153 of this Code for the inspection of weights and measures. Ch XIV.

The provisions of the Code relating to search-warrants are contained in Ss. 96 *et seq.* Ss. 166,167.

When officer in charge of Police station may require another to issue search-warrants.

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(S. 380.)

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons

Ch. XIV.
S. 167.

for making it, to the Magistrate to whom he is immediately subordinate.

(S. 124, paras. 2, 3, 4.)

Before a Magistrate can grant a remand under this section, the accused must have been brought before him. Shera, 2 Panj. Rec., 72. A remand to Police custody ought only to be granted in cases of real necessity, and when there is good reason to believe that the accused can point out property or do something that will assist in elucidating the case. Panj. C. Ct. Cir. ix., March 15, 1868. The twenty-four hours during which the village Police may detain an accused person under Act (Bombay) VIII, 1867, are not be included in the time allowed to the District Police officers by this Code.—Bom. H. Ct. Cir., 1260., 1869; *Resn. in Chambers.*

As to what constitutes a detention by the Police, the Calcutta High Court, in the case of Behari Singh and others (7 W. R., 4), held that, if, as is frequently the case, a Police officer, without arresting a person himself, directs some of the neighbours to take charge of him, he is responsible in the same way as if he had himself made the arrest, the person arrested being in law in his custody. In the case of Puran Kusam Narasaya Pantulu (2 Madras, 396), the Madras High Court held that the requiring of the attendance of a certain person by letter, and the deputing of two constables to accompany him, under the allegation that their duties were to prevent him from speaking to any one, amounts to an arrest and imprisonment.

In the appeal of a Police officer convicted of wrongful confinement (S. 340, Penal Code), the Calcutta High Court held that a Police officer is not empowered, by S. 167 of this Code, to detain without question an accused person for a period not exceeding twenty-four hours, but rather he is in no case justified in detaining a person for one single hour, except on some reasonable grounds warranted by the circumstances of the case. The time during which a person is wrongfully confined by a Police officer is material only in fixing the punishment for the offence.—Sheoprosunno Ghosal, 6 W. R., 88. In another case, in which the Police officer had been punished under S. 29, Act V of 1861, for having detained an accused person more than twenty-four hours, the Calcutta High Court held that, as the detention was not continuous, the Police officer had committed no offence.—Indrobee Shaha, 1 W. R., 5.

Under no circumstances can an accused person be detained for more than twenty-four hours without the special order of a Magistrate; and, unless that special order be obtained, he *must*, at the expiration of that period, be either sent in to the Magistrate, or be discharged, any further detention being unlawful. As to the place of confinement, the Court remarked that, though the Code was not so express on this point as on the duration of the confinement, it was perfectly clear that it was intended that, when a Police officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but he should be sent immediately to the Police station, and there kept in the custody of the officer in charge of the station, who is the person entrusted by the law with the conduct of the inquiry.—Behari Singh and others, 7 W. R., 3.

Every prisoner must be forwarded from a Police station direct to

the nearest Magistrate having jurisdiction, and must not be sent to the next superior officer of Police.—Bengal Govt. Resolution, dated 22nd Sept., 1862, para. 12.

In all heinous cases, when a single prisoner is sent in, he should be handcuffed; when two or more prisoners are sent, they should be handcuffed to each other, two and two. In cases not of a heinous nature prisoners should not be handcuffed, unless violent, and then only by order of the officer in charge of the station not below the rank of Sub-Inspector. Bengal Pol. Cir. 27, 1863.

Para. 2 of this section now provides for a limit for the term of a remand order making it correspond with that fixed by S. 344 for trials in accordance with the rule laid down in the case of Sarkya Valad Dhaku, 5 Bomb., 31. *Crown Cases.*

Copies of all orders of remand with reasons for the same shall be transmitted by subordinate Magistrates to Sub-Divisional or District Magistrates within twenty-four hours from their date. Mad. H. Ct. Pro. May 6, 1878. Weir, *App.* xvii.

Report of investigation by subordinate Police-officer.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

(S. 123.)

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

(S. 125.)

Sch. V, No. 25 contains a form of a bond with sureties under this section.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to

Ch. XIV.
S. 170.

take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

(S. 123, para. 1; S. 127, para. 1; S. 130.)

Sch. V, No. 26 contains a form of bond to prosecute or give evidence.

"To a Magistrate empowered to take cognizance of the offence upon a Police report." This would be to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate and any other Magistrate so empowered by the Local Government or District Magistrate (S. 191) provided that he had power to inquire into or try the particular offence. The evidence obtained by the Police should be sent up as

found and not kept until it is all complete. Kodai Kahar, 5 W. R., 6. The practice of sending up accused persons by instalments in order to find out whether the conviction holds with the Court of Session is strictly forbidden. The Police should rather exert themselves to arrest at once all persons who are accused and against whom the case is ascertained or proved. Ben. Pol. Cir. 64, 1866.

The complainant and witnesses should be required to attend on an early date. An interval of one month was seriously censured. Bhim Manjee, 6 W. R., 52.

In the Panjab the Police are required to provide for the diet of witnesses up to and inclusive of the day on which the charge sheet is handed over to the Judicial Court, and also the diet of the prisoner up to and inclusive of the day on which he is made over to the judicial lock-up. For this purpose District Superintendents of Police receive a permanent advance from the Treasury. On presenting the charge sheet, the Police officer should move the judicial officer to pass the sums disbursed in the particular case. The Police will however have nothing to do with the diet of witnesses or of accused persons in cases which are instituted in the Judicial Court on the petition of parties or on the motion of the Court.—Smyth, p. 122.

When a District Superintendent of Police, on looking into a case, finds that any witnesses have been unnecessarily sent in, he should at once report the circumstances to the Magistrate in order that they may be discharged before the trial, should the Magistrate think proper. When such witnesses are dismissed, the District Superintendent should inform the Police officer who sent up the case, and point out the reasons of their not being required, thereby instructing him in his duty.—Bengal Police Crime Manual, Chapter II, para. 26. The escheat of recognizances is a proceeding resorted to when persons who have undertaken to give evidence in a criminal case have failed without just excuse to attend any Court and have thus caused an obstruction to public justice, and in so dealing with a complainant and his witnesses, a Magistrate should give them an opportunity of justifying their default.—Dassoo Manjee, 11 W. R., 39.

Complainants and witnesses not to be required to accompany Police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magis-

Ch. XIV.
S. 172.

trate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

(Ss. 130, 131.)

See note to S. 170.

Diary of proceedings in investigation.

172. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

(S. 126.)

A list of any articles found on the person of the accused on his arrest must be forwarded with the daily diary or final report of the case.—S. 51, *post.*

The last para. of S. 172 is an important provision.

Criminal Courts may use Police diaries to aid them in an inquiry or trial, but Police diaries are not substantive evidence in a case concerning the offence under investigation nor can they be read to the Jury on a trial. Hurdutt Surma, 8 W. R., 68. The mode in which they should be employed has been indicated by the Punjab Chief Court in the following Circular X, dated May 21, 1869 :—

"The law requires that besides reporting a case in the first instance, all action taken by the Police officers and proceedings generally in each case should, from day to day, be entered in a diary (S. 172, Criminal Procedure Code). The Chief Court has several times had occasion to animadvert on on the imperfect character of the daily record of their proceedings made by the Police when conducting enquiries. The provision of S. 172 that such diary shall not be evidence of the facts stated therein, except against the officer who made it, must not be understood to relate to the very valuable evidence of a negative character afforded by diaries, nor to prohibit Criminal Courts from tracing

from these proceedings the various stages through which an inquiry may have passed, the intervals that may have elapsed in it, and the steps by which a confession may have been elicited or some other important piece of evidence obtained.

"These diaries, although they are not evidence to prove the facts stated therein, except in the cases mentioned in the Act, are often when regularly kept, of the very greatest use in enabling Criminal Courts to test the value of the testimony of witnesses, especially those belonging to the Police, to establish dates, and to ascertain particulars which enable such a Court to judge of the weight to be attached to the evidence given at the trial. Moreover, being indicative, though not of probative effect, they may furnish the means of directing appropriate questions or supply the basis of a cross-examination. The Court accordingly requests that Magistrates of Districts will enforce a strict compliance on the part of Police officers with the requirements of the Code on this point.

"The Court further observes that, although these diaries are not sent to Magistrates, they are entitled to call for and inspect them whenever they may consider necessary. They should make it a uniform rule to do so in cases where the Police investigation has extended over several days and the credibility of any of the witnesses is doubtful and their calling for them occasionally at other times would have the best possible effect in checking the frequent irregularities committed by the subordinate Police officials. The Magistrate of the District also should not only notice that the diary is regularly kept ostensibly, but he should see that each day's diary has been forwarded to, and has regularly reached the District Superintendent in course of post: this being the only security against the contents being antedated."

Although Police diaries may be referred to by a Court to aid it in investigating a charge, they should not be acted on as strict proof save in so far as they go to contradict or qualify subsequent evidence of the persons who made them. It requires the utmost discrimination and discretion to make a proper use of such records, and while they may fairly be appealed to for the history of the several stages though which the Police investigation into a crime has passed, they afford no safe or certain material from which conclusions of guilt should be drawn. Kallun (1 Leg. Rem., 26).

A Police diary is not substantive evidence.

The Magistrate of the District should see that the diary is regularly kept up by the Police, and that last day's diary has been forwarded to, and has regularly reached, the District Superintendent in course of post: this being the only security against the contents being antedated.—Smyth, p. 84.

See note to S. 162 regarding the manner in which Police diaries should be used.

Report of Police-officer.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall

forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(Ss. 125, 127.)

Police to inquire and report on suicide, &c.

174. Every officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or

instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

(S. 133.)

If a Magistrate, not duly empowered by law on that behalf, holds an inquest erroneously and in good faith, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*c*.)

The accompanying form of a letter to the Civil Surgeon to examine wounded persons and dead bodies has been prescribed for use in Bengal:

From

THE MAGISTRATE

To

THE CIVIL SURGEON OF

SIR,—I have to request the favour of your examining sent to the hospital on the . Be so good as to fill up the columns on the reverse of this letter, and return it to me with such

Ch. XIV.
S. 174.

remarks as you may consider necessary to show clearly your opinion of the cause of

2. All that is at present known of the case is as follows :—

I have the honor to be,
SIR,
Your most obedient servant,
Magistrate.

MAGISTRATE'S OFFICE,
The 18 .

Form on back of the letter to Civil Surgeon.

1	2	3	4	5	6
Nature of injury, *i.e.*, whether a cut, a bruise, or a burn, &c., &c.	Size of each injury in inches, *i.e*, length, breadth, and depth.	On what part of the body inflicted.	Slight, severe, or dangerous.	By what kind of weapon inflicted.	Remarks.

Civil Surgeon.

HOSPITAL,
The 18 . [Cal. Sud. Ct. Cir. 90, April 30, 1857, Wilkins, 95.]

. The following rules and orders under this section are in force in Lower Bengal.

At every Division of a District where there is a Sub-Assistant Surgeon or European Medical officer, the *post mortem* in all cases of violent or suspicious deaths occurring in that Division should be held by such officer.

Where there is only a Native Doctor, whenever the state of the dead body, the distance, the weather, or the condition of the roads renders it improbable that the body will reach the Sudder Station in such condition as to enable the Civil Surgeon satisfactorily to hold a *post mortem* examination on it, the body must be sent to the Subdivisional Medical officer. A copy of the report of such officer will, however, be submitted to the Civil Surgeon, who will make any remarks he thinks

proper on the margin of the report, for the information of the Subdivisional officer. When the body has external marks of violence as in the case of hanging, fractures or severe cuts, the Subdivisional Magistrate should himself, if possible, view the body in the presence of the Native Doctor.

When, on the other hand, circumstances permit, the body should be sent to the Sudder Station for examination by the Civil Surgeon, and at such examination the Sub-Assistant Surgeon or the Native Doctor of the Sudder Station should be present, so that he may be able to attend, if required, at the Subdivisional Court, and give evidence as to the causes of death in cases in the which the absence of the Civil Surgeon on his duty would be attended with serious inconvenience to those under his medical charge. Resolution, Bengal Government, October 10, 1863.

The following Circulars have been issued, for the guidance of the Bengal Police, by the Inspector General :—

The Principal Inspector General, Medical Department, having brought to notice that, owing to the very meagre information collected, and the imperfect manner in which, in cases of poisoning or death, the first investigations are frequently conducted, much important medico-legal evidence is often lost,—the following hints, drawn up by the Civil Surgeon of Patna, are circulated for general information :—

I.—*In cases of suspected poisoning,*—

1. Bring away under seal any food (especially átá or sweetmeats), drink, tobacco, or drugs, which may be in the house or near the body.

2. If vomiting has occurred, swab up with a clean rag any vomited matter which may be on the person or bed, and seal up the rag in a packet.

3. Bring away, under seal, any clothing, matting, wood, or mud flooring into which any vomited matter has soaked.

4. As carefully bottle and seal the contents of any vessel containing vomited matter.

Ascertain the exact time between the receipt of food, drink, or medicine, the appearance of symptoms, and occurrence of death.

II.—*In cases of hanging or strangulation,*—

1. Note, if possible, before cutting down the body, or removing the strangulating medium, any lividity of face, especially of lips and eyelids, any projection of the eyes the state of the tongue, whether enlarged and protruded, or compressed between the lips, the escape of any fluid from mouth and nostrils, and direction of its flow.

2. On cutting down the body or removing the strangulating medium, note particularly the state of the neck, whether bruised along line of strangulation.

3. Note the direction of the mark, whether circular or oblique.

4. Note the state of the thumbs, whether crossed over the palm.

5. If possible, bring away the materials by which hanging or strangulation have been effected.

III.—*On finding a body in a tank or well,*—

1. Note any marks of blood around the mouth, or on the sides of the well or tank.

Ch. XIV.

S. 174.

2. On removing the body, carefully examine for, and note any external marks of injury, especially about head and neck.

3. Note state of skin, whether smooth or rough.

4. Examine the hands, and carefully remove any thing they may hold.

IV.—*In the case of a body found murdered in an open field,*—

1. Note the number, character, and appearance of any injuries.

2. Should a weapon be found, cover with paper and seal any marks of blood, and especially note and preserve any adherent hairs.

3. In the case of an exposed infant, note the state of the chord, especially if tied, and any marks of violence.

V.—*In a case of presumed murder and burial of the remains,*—

1. Examine for, and note any marks of violence, about skull especially.

2. Note carefully any indications of sex; especially bring away a jaw and the bones of the pelvis.

3. If any suspicions of poisoning, bring away (sealed) the earth from where the stomach would have been.

4. If a body, presumed to have been murdered, has been burned, collect and bring in any fragments of bones which may be found among the ashes.

VI.—*In rape or unnatural offence,*—

Send in the lower garments worn by the person when assaulted.

Ben. Pol. Cir., No. 29; 1865.

In all cases of sending in a corpse for *post mortem*, it should be accompanied by a *challan* containing an accurate description of the corpse, a statement of the apparent cause of death, and the circumstances, if any, which give rise to a suspicion of foul play. It should be filed by the Medical officer who examines the body. A copy should be sent direct to the District Superintendent by the quickest possible means. On receipt of this the District Superintendent should write a letter to the Medical officer in the prescribed form requesting him to examine the body and submit his report, which, when received, should be forwarded in original to the Magistrate having jurisdiction, a copy being kept by the District Superintendent.

The corpse should be sent in the charge of a trustworthy constable, whose name, together with those of the bearers or others accompanying it, should be recorded in the report of the inquest held under S. 133, such precautions being necessary to prevent the corpse being changed in transit, or in case of such change being alleged to have taken place of fresh proof of the identity of the corpse. Ben. Pol. Cir, 33, 1867.

The following rules for the guidance of Medical officers in conducting *post mortem* examinations and examining wounded persons have been issued by the BOMBAY GOVERNMENT:

1. The Medical officer shall, immediately on receiving from any person for examination a corpse or any other substance, inquire and note down the name and residence of such person, and if he be a District Police officer, his number and rank, and shall, without delay, grant to such person a receipt for the corpse or other substance delivered by him. The receipt so granted shall contain a list of the

articles or substances received by the Medical officer and the name of the person from whom they were received, and to whom the receipt is given. It shall be the duty of the Medical officer to examine all bodies sent to him as soon as practicable after arrival.

2. In cases where the body is sent to him, the Medical officer should note the time of its arrival, the date and hour of the *post mortem* examination, the sex and height and apparent age of the deceased, the state of the body, whether well nourished or otherwise, the existence or absence of any caste or other marks not of recent origin, such as cicatrices, deformities, and the like, and whether the marks upon it correspond with those mentioned in the Police report.

3. In cases where he has been taken to the place where the body lies, besides the above, he should note the place and nature of the soil (if out in the open country), where he found the body, also its position and the state of the clothes, if any. He should also note in cases of death from violence, the position of the body in reference to surrounding objects, such as sharp stones and the like, contact with which, it may be alleged, has produced the injury, also whether any blood-stains are visible on such objects or anywhere near the corpse, and whether any weapons are lying near it. In cases of suspected death from poisoning, he should note whether any appearance as if of vomited matters, &c., is present in the neighbourhood of the body.

4. In every case he should describe the condition in which he found the body, noting the degree of coldness, warmth, rigidity and putrefaction, and the amount and nature of the clothing or covering on it.

5. Commencing at the skull and terminating at the feet, he should examine the bones to determine whether any of them are fractured or dislocated, and inspect the vertebral column throughout, also the teeth, hair, orifices, of the body, and general surface, and also note the state of the pupils, whether contracted or otherwise, and whether any substances are grasped in the hands.

6. If there be any wound or contusion on the body, he should describe its position, length and breadth. He should note the depth and direction of all wounds, whether there are any cuts on the clothes corresponding to them, and examine the wounds carefully for the presence of foreign bodies, preserving such as are found. He should also state whether in his opinion the wound was mortal, giving his reasons for such opinion, and he should be especially careful to examine the neck for marks of compression.

7. He should state his opinion as to whether the wounds, if any, could have been self-inflicted, or whether they might have been the result of accident giving reasons for his opinion.

8. He should carefully examine any gun, sword, blood-stained instrument, stick or stone, by which the wounds may have been inflicted, and mark such instrument so as to be able to recognize it, if asked to do so. He should also compare the weapon with the wound alleged to have been caused by it, and state whether in his opinion it was possible for the wound to have been produced by it.

9. He should commence his dissection of the body by removing the top of the skull in the usual way with a saw, and note anything that appear unusual.

Ch. XIV.

S. 174.

10. He should then make an incision from the chin down to the pubes, so as to be able to examine the wind-pipe, heart, lungs, liver, stomachs, spleen, kidneys and intestines, also the urinary bladder, and note whether any of these organs appear diseased, and whether any wound on the outside of the body communicates with the contents of the chest or abdomen.

11. In making his examination, he should disturb as little as possible any organ which may communicate with an external wound, if he has reason to think that the body may be re-examined by another medical man.

12. In the case of females he should examine the ovaries and uterus, bearing in mind that abortion is sometimes caused by the introduction into the uterus of pointed instruments which may cause death. He should note the presence or absence of pregnancy, the probable period to which pregnancy had advanced, and examine the external generative organs for marks of violence.

13. In the case of infants, he should note the condition of the umbilicus and cord, if any of the latter remain. He should also remove the lungs, and try whether they sink or nearly sink in or float in water.

14. In cases of suspected poisoning, he should not neglect to examine every organ of the body, and should pay special attention to the rules laid down in Circular No. 1353, dated the 23rd April 1868, issued by the Inspector-General, Indian Medical Department.

15. He should bear in mind that death may possibly have been the result of starvation, exposure to cold or heat, smothering, drowning, lightning, strangulation, poisoning or disease, and state whether death was due to any of these causes, giving his reasons. He should also bear in mind the instructions already published for the guidance of Police officers in cases of death from drowning, hanging and the like.

16. He should keep all his original notes, even though he may make a fair copy of them afterwards, and should not lend them to any one to read.

17. In all cases the examination of the body should be thorough, and the notes of the appearances discovered should be as minute as possible.

18. Full notes should also be made in cases of examination of wounded persons.

19. When summoned to give evidence in any case in which he has made a *post mortem* examination, or examined a wounded person, the Medical officer should bring with him to Court the original notes made by him at the time of conducting such examination.

20. The notes of the examination in all cases, or a fair copy of them in the handwriting of Medical officers, should be at once made in a book kept at the Hospital or Dispensary for the purpose and should be signed by him. *Bom. Gaz.*, 1873, p. 947. The Hospital Assistant in charge of the Dispensaries at Supa, Halial, Yelapur, Mundagod, and Hanore, have been appointed Medical officers under section 174 to conduct *post mortem* examinations. *Bom. Gaz.*, 1874, p 338.

In the NORTH-WESTERN PROVINCES, the following orders are in force:

Magistrates should be careful that, in every case of suspected death, the body is taken *direct* to the Civil Surgeon by the Police, who should lose no time in despatching it, with such information as to the history of the case, symptoms, &c., as can be procured without the occurrence of delay. After the Civil Surgeon, on completion of the *post mortem* examination, and preparation of the subjects for despatch to the Chemical Examiner, has communicated the necessity for such despatch to the Magistrate, the, latter will prepare the report of the circumstances attending the death as they can be ascertained. The Magistrates should instruct the Police that, after the despatch of the body with the requisite information to the Civil Surgeon, they are to abstain from further communication with that officer, except through the Magistrate. Agra Sudder Court Cir. 11, 1866.

In cases of suspected poisoning, the following points should be inquired into, and their answers embodied in the reference to the Chemical Examiner:—

1. What interval was there between the last eating or drinking, and the first appearance of the symptoms of poisoning?

2. What interval was there between the last eating and drinking, and death (if this occurred)?

3. Did the person move, and if so, how far from the place when the first symptoms were noticed?

4. What were the first symptoms?

5. Did vomiting or purging occur?

6. Did the person become drowsy, or fall asleep?

7. Were cramps or twitching of the limbs observed; or was tingling in the skin or throat complained of?

8. Any other symptom noticed should be mentioned. Agra Sudder Court Cir., 11, 1866.

The following Rules have been prescribed by the Governor General in Council (*India Gaz.*, May 10, 1879, *Sup.* p. 454) for inquiring into, and reporting on, serious accidents on State Railways:

Serious accidents are accidents attended with loss of life or limb or other serious injury or danger of such loss or injury to persons travelling, or being upon the Railway; or accidents that have, or might have, caused large loss of public or private property.

2. In the case of any State Railway passing through Native States, the Government of India will, from time to time, direct what official shall, for the purposes of these Rules, be regarded as the Magistrate of the District in respect of the portions of the Railway situate in each such State.

3. Throughout these Rules, the words, "nearest District Superintendent of Police" shall be substituted for the words "Railway Police Superintendent" in respect of State Railways, whereon a Railway, Police Superintendentship has not been established.

SECTION I.

Duties of Managers and Railway Officers.

4. On the occurrence of any serious Railway accident, it shall be the duty of the nearest Station Master to give immediate notice thereof in writing, or by telegraph, when possible—

Ch. XIV.

S. 174.

(a) to the nearest Magistrate;
(b) to the Railway Police Superintendent;
(c) to the officer in charge of the Police station in the jurisdiction of which the accident occurred.

5. It shall be the duty of the Manager to give notice of the accident—

(a) in the case of accidents on Railways open for public traffic only, to the Consulting Engineer to Government for Guaranteed Railways, who has been authorized by Government to investigate and report on such accidents, and who, for the purposes of these Rules, is hereinafter called the Government Inspector;
(b) to the Director of the Railway System, in as full detail as practicable;
(c) to the Secretary to the Local Government in the Judicial Department within 12 hours after the occurrence, in order that the Local Government may, if necessary, watch over the investigation.

6. The Manager shall, in cases of serious personal injury, afford medical aid to the sufferers, and pay all their expenses while in hospital.

7. The Manager shall cause departmental enquiry to be held promptly for the thorough investigation of the causes of every serious accident, and shall require the Superintendent of Railway Police to be present at the inquiry if possible; in his unavoidable absence, an officer of Police should be present; also he shall communicate the result of the inquiries to the Magistrate mentioned in Rule 4, and if an open line, to the Government Inspector, with a statement of the persons, if any, whom the Railway authorities intend to prosecute, unless the matter should form the subject of a Magisterial inquiry under Rule 8.

8. It shall be the duty of the Manager to bring to justice all Railway subordinates guilty of crime, or of breaches of the Railway Act or Rules and Regulations calculated to cause serious accident, and to require the Superintendent of Railway Police to make a report of all cases in which there appears to be ground for suspecting Railway subordinates of such misconduct. Also he shall require the Superintendent of Railway Police to prosecute all persons whom it may be decided should be prosecuted.

9. The Manager shall facilitate the movements of the Medical officers, the Police, the Magistrate, the Government Inspector and others concerned, in reaching promptly the scene of the accident. And he shall assist these authorities in conducting inquiries, and depute some responsible and intelligent officer to aid them in obtaining evidence and securing the attendance of the Railway subordinates.

10. In cases in which it is the duty of the Railway officers to arrest any offender under Section 24 of Act XVIII of 1854, or otherwise, the Manager shall see that he is at once arrested, or when such offender is himself a Railway officer whose removal would cause danger or grave inconvenience, that precautions are taken to prevent his escape pending the arrival of a substitute.

11. He shall arrange for the attendance at the Court or place of inquiry of any officer or servant of the Railway upon the requisition of the Magistrate or other Civil officer.

12. He shall maintain at each Railway station a list of Magistrates

or other officers (such list to be furnished by the Magistrate having jurisdiction over the place where the station is situate), to whom reports of accidents should be made; and he shall furnish Magistrates with a list of Railway officers to whom any summons may be sent for service on subordinate Railway servants.

13. In the case of judicial inquiries, he shall report the result to the Director of State Railways, and forward copy of the decision of the Court.

14. He shall report monthly to the Director of State Railways all Railway accidents of a serious nature, whether happening on the open or unopen line, and report what steps have been, or are being taken, in order to prevent recurrence of similar accidents.

15. He shall issue such detailed instructions as will give effect to the foregoing Rules, and furnish the Director of State Railways with copy of all such detailed instructions as issued.

SECTION II.

Duties of the Railway and District Police.

16. An investigation may be made by the Railway Police in the case of any Railway accident.

17. Where there is no Railway Police, the duties imposed by these Rules on Railway Police must be discharged by the District Police, in addition to their duties as such.

18. In the case of serious accidents, the Railway Police Superintendent, if any, or the District Superintendent of Police, shall proceed without delay to the scene of the accident. If either officer be himself unable so to proceed, he shall depute a subordinate, who, in the case of the District Police, shall be an Assistant Superintendent of Police. The officer unable to proceed shall also at once inform his departmental superior and the Magistrate of the District.

19. Such accident shall forthwith be investigated by the Railway Police, or the District Police, as the case may be. If the investigation be made by the Railway Police, immediate information shall be given to the District Police, either direct or through the Magistrate of the District. The result of the Police investigation, prescribed by this Rule shall be reported to the Manager of the Railway, and to the Magistrate of the District.

20. When the investigation is made by the Railway Police, and officers of the District Police arrive on the scene of the accident, the latter shall afford all necessary assistance, and shall, if occasion arise, carry the investigation beyond the limits of the Railway premises. But the Railway Police Superintendent, if present, is primarily entrusted with the duty of investigation within such limits. Subject to any provisions elsewhere contained in these Rules, the further prosecution of the case on the conclusion of the preliminary local Police investigation shall rest with the Railway Police.

SECTION III.

Duties of Civil Officers.

21. It shall be in the discretion of the Magistrate of the District, on receiving information of the occurrence of a serious Railway accident within the meaning of Rule 1, either—

Ch. XIV.

S. 174.

(*a*) himself to proceed to the scene of such accident and make any inquiry;

(*b*) to depute a subordinate Magistrate to make inquiry; or

(*c*) to direct investigation to be made by the District Police.

22. In all serious cases, it will be the duty of the Superintendent of Railway Police, if any, to proceed without delay to the scene of the accident to conduct this inquiry. If unable to go, he will at once report the fact to the Magistrate.

23. The Magistrate or other officer shall summon any servant of the Railway, and all other persons whose presence he may think necessary, and, after taking the evidence and completing this inquiry, shall, if he consider there are sufficient grounds for judicial investigation, take the requisite steps to bring to trial any person he may consider criminally liable for the accident.

24. The Manager, or the Magistrate of the District, or the District Superintendent of Police, may require the Civil Surgeon of the District or any District Medical officer to proceed to the scene of any Railway accident attended with personal injury, for the purpose of rendering medical aid, and of making before the investigating authorities any professional statements that may be required; and it shall be the duty of such Civil Surgeon or Medical officer to proceed accordingly.

25. In cases where technical points are involved, the Magistrate or other officer should be careful to call for and take the opinion of professional persons.

26. The result of this preliminary local inquiry will be communicated by the Magistrate to the Manager of the Railway.

27. Should the Magistrate have delayed judicial action until receipt of the Railway Departmental report, he will then decide whether to discharge the persons accused, or to proceed with the case.

28. If the Manager of the Railway do not prosecute the persons considered liable by the Civil officer, the Magistrate will arrange for their prosecution.

29. If, in the course of the judicial inquiry, the Magistrate wishes for the assistance of the Government Inspector, or Manager of the Railway, or for the attendance of any officer of the Railway, to explain or give evidence upon any matter relating to Railway supervision, management, or working, he will issue a requisition to such officers to attend the Court.

30. On the conclusion of the judicial inquiry, the Magistrate will, if necessary, report the result for the information of the Local Government, and he will send a copy of his decision to the Manager of the Railway.

31. Magistrates, through whose jurisdiction a State Railway passes, shall maintain a list of Railway officers (such list to be furnished by the Manager), to whom summons may be sent for service on subordinate Railway servants, and shall furnish the Manager with a list of Magistrates or other officers to whom reports of accidents should be made.

Section IV.

Government Inspector's duties.

32. On receiving notice of a serious accident, the Government

Inspector shall proceed himself, or by deputy, to the scene of the accident, shall note the facts, watch the proceedings, and make such inquiries and investigations as he may think fit, calling upon the Manager or officer in charge of the Line for any assistance needed, and shall form his own conclusions.

33. He shall send his report with any notes he may desire to record to the Government concerned, forwarding copy to the Manager of the Railway, or to the Magistrate having jurisdiction in British or in Native Territory as the case may be.

34. He shall assist the Magistrate so far as he can in person or by deputy in the judicial inquiry whenever called upon to do so.

35. In important cases, where a remedy or change of system appears necessary, he shall inform the Government of India what steps have been or are proposed to be taken by the Railway to prevent a recurrence of similar accidents, and whether in his opinion further action in the matter is desirable.

Other rules on the same subject and generally to the same effect have been issued by several Local Governments. (See *Oude Gaz.* 1874, Part II, p. 20 for rules relating to the Oude and Rohilkund Railway. Bengal Govt. Cir. 42, April 4, 1873, relating to Railways where a special Railway Police Force has been established.) Of these it will be sufficient to quote the following instructions issued by the Government of Bengal regarding the duties of the District Superintendents of Police and Magistrates on the occurrence of a Railway accident :—

The District Superintendent will himself proceed to the scene of every serious accident of the nature likely to have endangered life or caused serious loss of property. If, for any unavoidable reason, he is unable to go himself, he will at once report the fact to the Magistrate, who will either himself undertake the inquiry, or depute his Assistant or the Assistant Superintendent of Police.

The officer conducting the inquiry shall summon all officers of the Railway Department whose presence he considers necessary; and if he is of opinion that sufficient ground exists for a judicial investigation, he shall bind all parties to appear before the Magistrate on a day to be fixed by that officer.

The Magistrate on receiving the report of the officer holding the inquiry, shall fix a time and place for the judicial investigation of the case. Ordinarily, the investigation into serious accidents of a nature likely to endanger life, or cause serious loss of property, shall be held at the Railway station nearest to scene of the accident; but if the officer holding the inquiry have reason to think that the ends of justice will be promoted by his so doing, he may, on the application of the Railway Company, or of the Consulting Engineer to Government, appoint any other place within his jurisdiction for the hearing of the case; or may, with the sanction of the High Court, transfer the case for judicial investigation to any other Magistrate having jurisdiction on the line. Such other Magistrate shall thereupon proceed to inquire into the case in the same manner as if it had happened in his own District.

The Magistrate will, whenever he wishes for the assistance of the Consulting Engineer, either in aiding the Police inquiry, or in prosecuting the case before him, or in giving evidence on matters relating to

Railway administration, issue a requisition to that officer to attend. He will report the result of his inquiries into all serious accidents to the Commissioner for the information of Government.

He will insist upon the attendance of all officers of the Railway Company, of whatever rank, if he considers such attendance necessary.

He will enforce the provisions of the Railway Act against the high officers of the Railway Company, in the event of their omitting to prosecute their subordinates for breaches of railway law. Bengal Government Order, dated 8th Sept., 1865.

Power to summon persons.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

(S., 134.)

Non-attendance in obedience to such an order by a Police officer is punishable under, S. 174, Penal Cede.

Refusal to answer questions other than those of a criminating tendency is punishable under S. 179, Penal Code.

If the answers given are false the person making them would be liable to punishment for intentionally giving false evidence as defined in S. 191 and punishable under S. 193, Penal Code.

Inquiry by Magistrate into cause of death.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Power to disinter corpse.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(S. 135.)

This section, it should be noted, declares that when a person dies while in the custody of the Police, the nearest Magistrate empowered to hold inquests, *shall* hold an inquiry into the cause of death.

Proceedings under S. 176 are not open to revision as they are specially excepted from the operation of S. 435.

In BOMBAY, all Magistrates have been authorized to hold inquests under S. 176 (*Gaz.*, 1872, p. 1325); provided that they are not Honorary Magistrates, in which case a special order on each occasion is necessary (*Gaz.*, 1873, p. 16). District Superintendents and Assistant District Superintendents have also been empowered to hold inquests, (*Gaz.*, 187, p. 4339).

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

(S. 63, para. 1.)

The Code does not affect any special jurisdiction or power conferred by any other law now in force (S. 1) and therefore S. 177 would not affect the jurisdiction of a Court under the Mutiny Act over British soldiers committing offences. That jurisdiction is, however, only permissive and therefore when the Civil authorites have got possession of the investigation of the offence, and the Military authorities have not availed themselves of the alternative procedure of trying the offenders by a General Court-Martial, the Magistrate is competent to proceed

Ch. XV. — Ss. 178, 179.

in the manner directed by the Code unless the Governor General in Council has under S. 530 issued rules to the contrary. Empress *v.* Maguire, I. L. R., 5 Cal., 124: (S. C.) 4 Cal. L. R., 432.

Power to order cases to be tried in different Sessions Division.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

(S. 63, para. 2.)

Under 24 and 25 Vic. c. 104 s. 15 a High Court has the superintendence over all Courts subject to its Appellate jurisdiction, and has power to direct the transfer of any suit or appeal from such Court to any other Court of equal or superior jurisdiction. S. 526 empowers a High Court under certain circumstances to transfer a case or try it itself. In all cases transferred by the High Court to itself for trial, the trial may, if the High Court so direct, be by Jury. S. 267.

Accused triable in district where act is done, or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X and dies within the local limits of jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(S. 65.)

When jurisdiction over an offence is given by Ss. 179 *et seq.* to the Magistrates of more than one District, it is often doubtful where the inquiry or trial should be held. The following rules have been issued for the guidance of Magistrates in the N. W. Provinces and the Punjab on this point:

A Magistrate should act under S. 179 and the following sections solely with reference to the convenience of the public: ordinarily the proper district for the inquiry and trial of offences falling under those sections would be that where the witnesses could, with the least inconvenience, attend. In such cases, therefore, the Magistrate to whom the complainant or prosecutor may apply, should commence the investigation, and proceed with the inquiry and trial, unless he find, in the course of inquiry, that the case can be more conveniently tried in another district. In the event of the latter contingency, he should suspend further proceedings, and place himself in communication with the Magistrate of such other district, recommending that the case be removed to that district. If the Magistrate of this district should concur, but not otherwise, the proceedings and the accused should be forwarded to such other Magistrate, and the prosecutor directed to attend and prosecute his complaint. If the other Magistrate differ from him in his opinion as to the district in which the investigation and trial can be most conveniently held, the first Magistrate should either proceed with the inquiry and trial, or refer the question of *venue* for the determination of the Sudder Court.—Agra Sudder Court Circular 21, 1864; Also Judicial Commissioner, Punjab, Circular 24, December 24, 1864; Chief Court, Punjab, Cir., Oct. 23, 1873; Smyth, Chap. II, S. 31. If the transfer of a case to another district is proposed by a Subordinate Magistrate, the application should be submitted through the Magistrate of the District, who will, if he considers the transfer desirable, forward it with his own recommendation to the Magistrate of the District in which he thinks the case should be tried.—Smyth, *ibid.*

A girl was sold at Mirzapore by her mother to a prostitute, who took her to Benares. The Sessions Judge of Benares tried and sentenced the latter woman, under S. 373, Penal Code, for "buying a minor with intent that she shall be employed for purposes of prostitution," overruling the plea of want of jurisdiction, on the ground that possession of the girl was a consequence by reason of which she was accused of an offence. On appeal, the Agra Sudder Court allowed the plea, holding the purchase with intent, &c., which took place at Mirzapore was the offence, and that no "consequence," such as is contemplated by S. 179, had ensued. The Court further ruled that the terms "anything which has been done" mean some act constituting the offence, or part of it; and that the terms "any consequence which has ensued" mean some consequence modifying or completing that act.—Mussamut Jowahir, 6 Agra, 46; Begum, *alias* Elahee Jan, *ibid*, 136.

Under S. 156 any officer in charge of a Police station, without the orders of a Magistrate, is competent to investigate any cognizable case which the Magistrate to whom he is subordinate can inquire into or try under section 179.

Ch. XV.

S. 180.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

(S. 66.)

The term "act" includes also an illegal omission. S. 4 last cl.

With reference to *Ill.* (*b*) see Reg. *v.* Sakhya Gorund and another, I. L. R., 1 Bomb., 50 in which it was held that the theft having been committed in foreign and not in British territory the conviction for that offence could not be sustained under S. 180; but the prisoners could be properly convicted of retaining stolen property in British territory. This was followed on Sunker Gope, I. L. R., 6 Cal., 307. See also Reg. *v.* Adivigada, I. L. R., 1 Mad., 171. But it has been held by the Madras H. Ct. that when the act by which the accused has become possessed of the property has been committed out of British India, no Court of British India has jurisdiction in respect of subsequent acts in remaining in possession of the property because the question whether such subsequent acts amount to an offence under the Penal Code requires proof of the commission of the substantive offence in the doing of the act by which the accused when out of British India became possessed of the property. This has, however, been remedied by Act VIII of 1882, S. 9 which has amended the definition of stolen property in S. 410, Penal Code, by making it immaterial whether the transfer has been made within or without British India.

In the absence of compliance with the provisions of the Extradition Act no Court of British India can recognize, as offences, acts over which by virtue of S 2, Penal Code, they have no territorial jurisdiction. Mad. H. Ct., Pro., Oct. 2, 1877, Weir, 151.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

(S. 68, S. 67, Illustrations.)

Stealing.

Any officer in charge of a Police station may, without an order of a Magistrate investigate such an offence, if it be a cognizable offence, provided that he be subordinate to the Magistrate who has jurisdiction to inquire into or try it. S. 156.

See note to S. 180 with special reference to the last clause of s. 181.

182. When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain.

where an offence is committed partly in one local area and partly in partly another, or

or not in one district only;

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or where offence is continuing

where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any one of such local areas.

or consists of several acts.

(S. 67.)

Ch. XV.

S. 183.

When jurisdiction over an offence is given to the Magistrates of more than one District, it is often doubtful where the inquiry or trial should be held. The following rules have been issued for the guidance of Magistrates in the N. W. Provinces and the Panjáb on this point:

A Magistrate should act solely with reference to the convenience of the public: ordinarily the proper district for the inquiry and trial of offences falling under those sections would be that where the witnesses could, with the least inconvenience, attend. In such cases, therefore, the Magistrate to whom the complainant or prosecutor may apply should commence the investigation, and proceed with the inquiry and trial, unless he find, in the course of inquiry, that the case can be more conveniently tried in another district. In the event of the latter contingency, he should suspend further proceedings, and place himself in communication with the Magistrate of such other district, recommending that the case be removed to that district. If the Magistrate of this district should concur, but not otherwise, the proceedings and the accused should be forwarded to such other Magistrate, and the prosecutor directed to attend and prosecute his complaint. If the other Magistrate differ from him in his opinion as to the district in which the investigation and trial can be most conveniently held, the first Magistrate should either proceed with the inquiry and trial, or refer the question of *venue* for the determination of the Sudder Court.—Agra Sudder Court Circular 21, 1864; Also Judicial Commissioner, Panjab, Circular 24, December 24, 1864; Chief Court, Panjab, Cir., Oct. 23, 1873; Smyth, Chap. II, S. 31. If the transfer of a case to another district is proposed by a Subordinate Magistrate, the application should be submitted through the Magistrate of the District, who will, if he considers the transfer desirable, forward it with his own recommendation to the Magistrate of the District in which he thinks the case should be tried.—Smyth, *ibid.*

Offence committed on a journey

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

(S. 67 Illus. (*a*).)

An officer in charge of a Police station may, without an order of a Magistrate, investigate such an offence, if it be a cognizable offence, provided that he is subordinate to the Magistrate who has jurisdiction to inquire into or try it. S. 156.

The journey spoken in S. 183 of must be a continuous journey from one terminus to another in all its conditions. It appeared distinctly from the evidence that the journey was interrupted at Allahabad both on the part of the complainant and the accused, and therefore it was held that the Magistrate of Howrah had no jurisdiction to entertain the charge of an offence which was committed near Allahabad, on a

journey which was broken by both parties at that place. The Court remarked that the illustration "affords relief by giving jurisdiction to the local tribunal at the place where the offender either stops or is made to stop, or at the place where the complainant stops," and that "this means where either of them first stops or breaks his journey or voyage." The stoppage was also one not due to the nature of the journey itself.—*In re* Hiramun Ayah, 21 W. R., 64; (S. C) 13 B. L. R., 4, *App.*

The case of (Reg. *v.* Malony, 1 Madras, 193,) is also important on the matter of jurisdiction. In that case a Railway Guard was charged under S. 27 of the Railway Act with drunkenness whilst in charge of a train, &c. He was removed from that train and detained at a place beyond the local jurisdiction of the High Court, but he broke away and continued his journey to Madras. The High Court held that it had no jurisdiction to try the offence, since the proper effect and construction of S. 35, Act XVIII of 1862, is that, if a person be accused of an offence committed whilst a journey or voyage is *going on*, he may be tried if any part of that journey or voyage during which the offence is alleged to have been committed lies within the local limits of the Court's jurisdiction. Here the journey on which the offence was alleged to have been committed ended, so far as regarded the person accused, and the offence, at a place beyond those limits.

Offences against Railway, Telegraph, Post-office and Arms Acts.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

(Act IV, 1877, Ss. 238, 239.)

The law relating to Railways in India is contained in Act IV of 1879; to Telegraphs in Act I of 1876; to the Post-office in Act XIV of 1866; and to Arms and Ammunition in Act XI of 1878.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

In British Burmah, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall for the

purposes of this section be deemed to be the High Court.

(S. 69.)

See note to S. 182.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. When a Presidency Magistrate, or District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

(Ss. 157, 174.)

In MADRAS all Magistrates of the first class have been authorized to act under S. 186, (*Gaz.*, 1873, p. 717); also in Oude (*Gaz.*, 1873, p. 3): also in BOMBAY (*Gaz.*, 1872, p. 1325); provided that in Bombay such Magistrates, are not Honorary Magistrates, when a special order is necessary in each cases (*id.*, 1873, p. 16).

In the PANJAB all senior officers at head-quarter stations under the Magistrate of the District, who are Magistrates of the first class, have been empowered to act under this section, but only in the absence of the Magistrate of the District from the station. For this purpose it has been declared that the senior Assistant Commissioner, who is a Magistrate of the first class, shall be deemed the senior officer under

the Magistrate, and if there be no such officer, the senior Extra Assistant Commissioner, being a Magistrate of the first class, shall be so deemed.—*Gaz.*, 1873, p. 75.

The inquiry held by the Magistrate who takes cognizance of the offence is evidently not an inquiry under Chapter XVIII of this Code, but to satisfy himself that there are *primâ facie* good grounds for sending the person believed to have committed the offence to a Magistrate having jurisdiction to inquire into (Chapter XVIII) or to try such offence.

The Extradition Act (XXI of 1879, Ss. 11—17) provides for the trial of offences committed out of British India. S. 15 of that Act confers on a Magistrate in British India, the power to arrest a person charged with the commission of any certain specified offences beyond British India and in a foreign State in alliance with Her Majesty and S. 16 provides for the course to be followed after such arrest.

A Political agent, who is also a Magistrate in an adjoining District, is competent to issue a warrant for the arrest of a person in that District for an offence committed in the State of which he is the Political Agent. The fact that at the time of issuing that warrant he was not in that District but in foreign territory does not affect the legality of the warrant. Lacha Kalu, I. L. R, 1 Bomb., 141.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

(S. 175.)

Liability of British subjects for offences committed out of British India

188. When an European British subjects commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty com-

mits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been commttted at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Political Agent to certify fitness of inquiry into charge.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

(Act XXI, 1879, S. 9.)

Political Agent is defined in S. 190 *post*.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions or exhibits to be received in evidence.

(Act XXI, 1869, S. 10.)

Ss. 503 *et seq.* provide for the issue of a Commission to take the evidence of witnesses in an inquiry or trial. A commission can be issued only by a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court, when it appears that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be un-

LEGISLATIVE SECRETARIAT LIBRARY.

reasonable. S. 503. Under such circumstances copies of the depositions made or exhibits produced before the Political Agent or judicial officer in a foreign State would, under the orders of Government, be receivable as evidence.

"Political Agent" defined.

190. In sections 188 and 189 the expression "Political Agent" means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

(Act XXI of 1879, S. 3.)

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

(Ss. 25, 29, 140, 141, 142.)

Ch. XV.
S. 191.

Complaint means an allegation made to a Magistrate with a view to institute proceedings under this Code that some person whether known or unknown has committed an offence: but does not include the report of a Police officer. S. 4 (*a*).

A complaint may be made by the person against whom the offence has been committed; or by the public servant or his superior in a case of contempt of his lawful authority S. 195 (*a*): or by a Court in which or in relation to the proceedings of which, any of certain offences against public justice or relating to documents has been committed or of some Court to which such Court is subordinate, S. 195 (*b*), (*c*); or, in cases of offences against the State, by order of, or under authority from, the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in that behalf (S. 196.)

S. 141 (*c*) of the Code of 1872 expressly provided that "any person acquainted with the facts of a case may make a complaint." This has not been re-enacted, but will probably be accepted where the absence of the person aggrieved is accounted for or the offence is of a serious nature, as it is only for any offence under Chapter XIX or XXI of the Penal Code or under Ss. 493—498 that a complaint of the person aggrieved by the offence is specially required. Ss. 198, 199.

A Police report of the facts on which a Magistrate specially empowered to act may take cognizance of any offences would be (1) when after investigation a Police officer forwards an accused person for inquiry or trial on sufficient evidence or reasonable ground for suspicion that he has committed a cognizable offence (S. 170); or when the Police officer has reported that in his opinion no sufficient evidence or reasonable ground for suspicion exists, and the accused has been released on bail (S. 169): or when for reasons reported a Police officer has abstained from investigating into a cognizable offence (S. 157) or into a non-cognizable case when complaint has been made to the officer in charge of a Police station and been merely entered in his diary (S. 155); or after investigation into a non-cognizable case specially ordered by a Magistrate of the first or second class (S. 155).

The Government of Bengal, Cir. 16, March 25, 1880, has authorized the District Magistrate to nominate (? appoint) any single member or members of a Bench or any salaried Magistrate to receive complaints of cases triable by the Bench and which the Magistrates nominated are themselves empowered to try or commit for trial.

If any Magistrate, not especially empowered by law so to act, takes cognizance of an offence under S. 191 (*a*) or (*b*) erroneously in good faith, his proceedings shall not be set aside merely on the ground of his not being so empowered, S. 529 (*e*); but if he acts under S. 191 (*c*) his proceedings shall be void. S. 530 (*k*).

Act V, 1861, S. 24, declares that it shall be lawful for any Police officer to lay any information before a Magistrate and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence and to prosecute such person up to final judgment.

A petition containing a complaint or charge of any offence other than an offence for which Police officers may under this Code arrest without warrant, or of wrongful restraint or wrongful confinement and presented to any Criminal Court, must bear a stamp of eight annas.—

Act VII of 1870 (Court Fees' Act), Sch. II, Art. 1, (*b*.) If complaint of such offence is not made by written petition, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment, when his examination is reduced to writing.—S. 18. If the person accused is convicted, the Criminal Court, in addition to the penalty imposed upon him, is bound to order him to repay to the complainant the fee paid on such application or petition or at the time of the complainant's examination, and also any fees for serving processes that may have been paid, and such sums are recoverable as if they were fines imposed by the Court.—S. 31. When a complaint of a non-cognizable offence resulted in a conviction of a cognizable offence, it was held that the complainant was entitled to be recouped by the accused to the amount of the stamp fee paid upon his complaint, the test by which to determine whether the recoupment should be made being the nature of the complaint, not of the conviction.—Bomb. H. Ct., January 15, 1875. Bom. H. Ct., *In re* Chunya bin Shevaya, Nov. 27. Complaints of a public servant (as defined in the Penal Code), a municipal officer, or an officer or servant of a Railway Company, are exempt from stamp duty.—S. 19, cl. xviii.

In BOMBAY all Magistrates of the first class have been empowered to act under this section, unless they be Honorary Magistrates, when a special order is necessary in each case.—*Gaz.*, 1872, p. 1325; *Id.*, 1873 p. 16.

In the PANJAB all Senior Officers at head-quarter stations under the Magistrate of the District, who are Magistrates of the first class, have been empowered to act under this section, but only in the absence of the Magistrate of the District from that station. For this purpose it has been declared that the Senior Assistant Commissioner, who is a Magistrate of the first class, shall be deemed the Senior Officer under the Magistrate, and if there be no such Officer, the senior Extra Assistant Commissioner, being a Magistrate of the first class, shall be so deemed.—*Gaz.*, 1873, p. 75.

Transfer of cases by Magistrates.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

(Ss. 44, 141, paras. 2 and 3.)

All Magistrates in a District or in a Sub-division are respectively subordinate to the District Magistrate or Sub-divisional Magistrate, S. 17.

Ch. XV.

S. 192.

In MADRAS all Magistrates of the first class have been invested with powers under S. 192 (*Gaz*, 1873, p. 717); but in BENGAL the Lieutenant-Governor has stated that he will empower Magistrates to act under this section only on special applications and on special reason shown. The system introduced is for the Magistrate of the District to empower his subordinate Magistrates to receive complaints either generally or for only certain specified offences within certain local limits and to try these cases themselves throughout, without any transfer, except under any special order of the Magistrate of the District, though it is open to any Magistrate of a District to reserve to himself any classes of complaints and receive and distribute them, there being some classes of cases, such as defamation, which, in the opinion of the Lieutenant-Governor, most Magistrates should not be allowed to entertain. At large stations one Court should sit regularly as the Police Court, and take up ordinary Police cases as they are sent in by the Police.—*Cal. Gaz.*, 1873, p. 63.

In the N. W. PROVINCES all Joint or Assistant Magistrates or Assistant Commissioners holding their Courts at the head-quarters of a District, being Magistrates of the first class and next in seniority to the Magistrate of the District, have been vested with powers under S. 192, to be exercised only when the Magistrate of the District is absent from head-quarters.—*Gaz*, 1873, p. 903.

If any Magistrate not empowered by law in that behalf erroneously in good faith transfers a case under S. 192, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*f.*)

There are certain cases which a Magistrate must transfer to another Magistrate as he is himself not competent to try them (See S. 487). There are other cases which it is exceedingly undesirable that he should try either because he has himself initiated the prosecution, or is, from his personal knowledge of the facts, one of the witnesses, or has some strong interest in the result. S. 555 declares that no Magistrate shall, except with the permission of the Court to which an appeal lies try or commit for trial any case to or in which he is a party, or personally interested. *Explanation.* A Magistrate shall not be deemed to be a party to, or personally interested in, any case merely because he is a Municipal Commissioner.

A Magistrate is not incapacitated from dealing with a case judicially, merely because in the character of Magistrate, it may have been his duty to initiate the proceedings, but it is wrong that the District Magistrate should deal with such a case judicially when there was no necessity for his doing so, when he had himself discovered the alleged fraud and initiated the prosecution, and when he was one of the principal witnesses against the prisoner. The mere fact that the Magistrate was one of the witnesses for the prosecution was a most cogent reason why he should not have been a member of the Bench by which the trial was to be held. Bholanath Sen, I. L. R., 2, Cal., 35

The interest which disqualifies a Judge is not merely a pecuniary interest; that would be too limited a way of describing such an interest; but in describing it we ought rather to use the language of Norman, *J.* in the case of *the Queen* v. *Mehta Singh*, 4 B. L. R., 15, that is to say, "a personal or a pecuniary interest." A Magistrate could not try a person for an assault on himself; and without defining precisely what

amounts to personal interest, it appears to me that there must be either a personal or pecuniary interest in order to disqualify a Judge or Magistrate from exercising the general jurisdiction which the law confers upon him." In this case the proceedings were instituted by the Sub-Registrar who was also the Magistrate who held the trial. On this point the Court further remarked "I cannot suppose that because an officer in this position sanctions the institution, his mind is made up as to the guilt of the party, and that he is not willing to consider the evidence that may be produced before him, when he comes to try the case. In this case there appears to be no such interest as would prevent the case from going before the Magistrate as the trying authority; but as I have already said, it would be better, where it can be avoided, that this should not be done, and it may very well be that the Court, in its discretion, would in similar cases, direct the transfer of the case, in order that it should be tried by some other officer." Hiralall Dass, 8 B. L. R., 422. *Full Bench.*

Ss. 487, 555 prescribe certain rules for the disqualification of Judges and Magistrates in holding inquiries or trials or trying appeals.

Cognizance of offences by Courts of Sessions.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

by Assistant Sessions Judges.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

(Ss. 17, 18, 231.)

The following Magistrates are empowered to make commitments to a Court of Session, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate specially empowered in that behalf by the Local Government. S. 206. See note.

If, however, a commitment is made by any Magistrate or other authority purporting to exercise such powers duly conferred but not being duly conferred, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment of it considers that the accused has not been prejudiced, unless objection was made on

Ch. XV.

S. 194.

behalf of either the accused or of the prosecution to the jurisdiction of such Magistrate or other authority during the inquiry and before the order of commitment. The Court is competent to quash the commitment and direct a fresh inquiry by a competent Magistrate, if it consider that the accused has been prejudiced or an objection was so made. S. 532.

A Court of Session as a Court of original jurisdiction can take cognizance of certain "contempts" committed in its view or presence and pass sentence. S. 480.

A commitment by the Court of Session can also be made by that Court itself for one of the offences specified in S. 195, if that offence be committed before it or be brought under its notice in the course of a judicial proceeding. S. 477. A Civil or Revenue Court is also competent to commit for the same offences under the same circumstances. S. 478.

In the case, however, in which an European British subject is one of the accused, the proceedings can be taken only by a Magistrate of the first class who is also a Justice of the Peace and an European British subject, S. 443, and in such a case also the powers conferred by S. 477 on a Court of Session can be exercised only if the Sessions Judge be himself an European British subject, or if the presiding officer be an Assistant Sessions Judge, he is an European British subject, has also held that office for at least three years and has been specially empowered by the Local Government in that behalf. S. 444.

Cognizance of offences by High Court.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104. (S. 145.)

A Presidency Magistrate is competent to commit direct to the High Court (S. 206), but in cases inquired into by a Magistrate outside the limits of a Presidency town, such commitment can be made only where the accused or one of the accused is an European British subject, and the offence which appears to have been committed is punishable with death or transportation for life (S. 447), the Magistrate, however, in such a case must also be a Justice of the Peace and an European British subject. S. 443.

S. 23 of the Letters Patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104 gives the High Court of Calcutta extraordinary original jurisdiction over all persons residing in Bengal and Assam and authority to try at its discretion any such persons brought before it on charges preferred by the Advocate General, or by any Magistrate or other officer specially empowered by the Government on that behalf and S. 28 empowers it to direct the transfer of any criminal case or appeal to any Court of equal or superior jurisdiction, or also to direct the preliminary inquiry or trial of any criminal case by any officer or Court otherwise competent to investigate or try it.

195. No Court shall take cognizance—

Prosecution for contempts of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Nature of sanction necessary.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other

Ch. XV.

S. 195.

than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

(Ss. 465, 467, 468, 469, 470.)

S. 230 declares that where a fresh charge has been made or a charge has been altered so as to include an offence for the prosecution of which a previous sanction is necessary, the case shall not be proceeded with until such sanction has been obtained, unless the case is covered by S. 195, cl. 5, but S. 537 provides that except as before provided in this Code no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII (*i. e.*, in a case submitted to a superior Court for confirmation of a sentence passed), or on appeal or revision on account of the want of any sanction required by S. 195 unless such omission has occasioned a failure of justice.

When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistsate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate ; and may bind over any person to appear and give evidence on such inquiry or trial. S. 476.

The distinction between a complaint and sanction to prosecute should be noted.

A complaint, which means "an allegation made orally or in writing to a Magistrate, with the view to his taking action under this Code, that some one, whether known or unknown, has committed an offence"—S. 4 (*a*), when made by a public servant or a Court implies a public prosecution, whereas sanction is given to a private person who may desire himself to complain as aggrieved by the particular act which constitutes the offence, and this would make the prosecution of a private character. This distinction and the consequences of action so taken have been pointed out in the case of Baijoo Lall, I. L. R., 1 Cal., 450. It is no means in any case in which a party fails to prove his case, that the Judge, who has decided against such party, is justified in exercising the power given to him by this section. So long as it is a case as to which there is any possible doubt, or in which it is not perfectly certain that the Judge's decision must be upheld in the event of there being an appeal in the Civil suit, the Judge acts indiscreetly and wrongly, if, the moment he has given judgment in the Civil suit, he exercises the power to him by this section. At the same time, if, in the course of the Civil trial, the Judge has before him clear and unmistakeable proof of a criminal offence, and if, after the trial is over, he, on consideration,

thinks it necessary to proceed at once, of course it may be right to do so. Judges should, however, bear in mind that criminal prosecutions are frequently suggested by successful litigants merely to prevent an appeal in the Civil suit and they should be careful not to lend themselves to such suggestions too readily. They should also recollect that when they proceed to make a complaint, the responsibility rests on the Judge entirely, such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party and wrongly sanctioned by the Court.

Before sanction to prosecute can be properly given, it is necessary that the proceedings on the original complaint should have terminated in a regular manner. Bishoo Barik, 16 W. R, 77; Surbhanna Gaundan and others, 1 Mad. 30; but see *contra* Mohan Lall, 1 Leg. Rem., 144. The Court should then consider as has been pointed out in the case of the Queen *v.* Mahomed Hosein (16 W. R., 37) and Kasheenath Banerjea Kangalee Molla (Marshall, 407) whether there are good grounds for the application made to it or whether it has been made solely for the purpose of oppressing and harassing an adversary and preventing him from taking any further legal steps to which he may be entitled. In the matter of Gyan Chunder Roy, I. L. R., 7 Cal., 208.

The Calcutta High Court has in several cases condemned the practice of ordering the criminal prosecution of a complainant whose case has been dismissed under S. 203 on the report of the Police and without giving him an opportunity of establishing his complaint before the Magistrate. In nearly all these cases the complainant had challenged the correctness or impartiality of the Police investigation and asked to have his witnesses summoned and examined by the Magistrate but was refused. The High Court has pointed out the unfairness of such a course to the complainant, and the injurious effect of placing such power in the hands of the Police. At the same time the High Court has held that if the complainant does not, after sufficient interval of time, appear and dispute the Police report or ask to have his witnesses examined a prosecution may be ordered or sanction to a private prosecution may be given. Gour Mohun Singh, 16 W. R., 44; Ashroff Ali, I. L. R., 5 Cal., 281; *In re* Russick Lall Mullick, 7 Cal. L. R., 382; Choolhai Telee, 2 Cal. L. R., 315; Biyogi Bhagut, 4 Cal. L. R., 134; Gyan Chunder Roy, I. L. R., 7 Cal. 208; Karimdad, I. L. R., 6 Cal., 496; Salik Roy, I. L. R., 6 Cal., 582; Abul Hossein, I. L. R., 1 All., 497: Chackradar Potti, 8 Cal. L. R., 289.

If it is intended to charge a person with false evidence on two contradictory statements, the sanction of the Court before which each of those statements was made should be obtained. Babaji Setaram, 11 Bomb., 34.

It is not intended that the sanction should be expressed with so little definitiveness as equally to provide for the prosecution of any person for any offence in any Court whatever. It must refer to the Court in which the false statement was made, and to the occasion on which it was given, in order that the trying Court may inform itself as to the investigation or trial on which it is really authorized to enter. *Ibid.* See also Baijoo Lall, I. L. R. 1 Cal., 450; Kali Prosunno Bagchee, 22 W. R., 39.

No appeal lies from an order according sanction, under S. 195, to prosecute for any of the offences specified nor can such order be dis-

Ch. XV. — Ss. 196, 197.

turbed by a superior Court—Burkutoollah Khan, I. L. R., 1 All., 17, FULL BENCH; or direct that execution of such order be stayed—Ram Prosad Hajaree, 5 W. R., 24 *Mis. Cases*: even though the High Court would not have given the sanction itself, Miyagi Ahmed, I. L. R., 3 Bomb., 150: but when the sanction to prosecute for intentionally giving false evidence by making two contradictory statements omitted to state the Courts before which, or the occasion on which those statements were made, the sanction was annulled as being no proper sanction. Balaji Sitaram, 11 Bomb., 34.

The successor in office of a Judge or Magistrate before whom any of the offences specified in S. 195 is alleged to have been committed is competent to give the requisite sanction. The sanction of the Court not of a particular officer is necessary. The charge of incumbent leaves the Court the same. Mad. H. Ct. Pro. Nov. 12, 1872, 7 Mad. xiii. *App.*

Prosecution for offences against the State.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

(S. 465.)

Chapter VI of the Indian Penal Code relates to offences against the State.

S. 127, Penal Code, relates to the receipt of property, knowing the same to have been taken in war against an Asiatic power in alliance or at peace with the Queen, or by depredation on the territories of such power.

S. 294A of the Indian Penal Code enacted by Act XXVII of 1870, relates to the keeping of a Lottery Office, or publishing proposals regarding Lotteries.

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

(S. 466.)

The power of the Government to specify the Court before which the Judge or public servant shall be tried is not subject to the exercise of any general power of the High Court to transfer a criminal case under S. 526 which expressly declares that nothing in that section shall be deemed to affect any order made under S. 197.

The terms "Judge" and "public servant" are thus defined in sections 19 and 21 of the Penal Code :—

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a.*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c.*) A Member of a Punchayet which has power, under Regulation VII, 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Public servant."

21. The words "public servant" denote a person falling under any of the descriptions hereafter following (namely) :—

First.—Every covenanted servant of the Queen ;

Second.—Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government ;

Third.—Every Judge ;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth.—Every Juryman, Assessor, or Member of a Punchayet assisting a Court of Justice or public servant ;

Ch. XV.

S. 197.

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government; and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

EXPLANATION 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

EXPLANATION 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

S. 132 declares that no prosecution against any Magistrate, Military officer, Police officer, soldier or volunteer for any act purporting to be done under chapter IX, (Dispersion of unlawful assemblies) shall be instituted in any Criminal Court except with the sanction of the Governor General in Council.

Section 197 by implication vests in the Court or authority to whom the Judge or public servant not removable, &c., is subordinate, the power of sanctioning or directing such prosecution. It does not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore has it, unless there is a limitation. If there has not been sanction, it does not follow that the objection could have availed the prisoner after trial and decision. The objection is not one going to the root of the Court's jurisdiction, but something (like notice of action in certain civil cases) needed to justify a Court in going on, and preventing it from going on, if the objection is taken. There are objections which prevail *ipso jure*, others *ope exceptionis*. Moreover, there are many objections which can be of avail only if taken in due time. In the celebrated case, *Reg.* v. *Frost* (9 C. & P., 129—187), the distinction came out very prominently.—*B. Kristna Rau*, 7 Mad., 58.

The Madras Government has restricted to the Board of Revenue the power to direct or sanction the entertainment of complaints of offences committed in their public capacity by subordinate Magistrates, Tehsildars, Deputy Tehsildars, and Talook Tehsildars (*Gaz.*, 1873, pp 1437, 1514; 9 Mad. Jur., 31), but in regard to all other officers this power has been reserved to Government.—*Gaz.*, 1873, p. 1437; 9 Mad. Jur., 31.

A principal Sudder Ameen, exercising the powers of a Judge of a Small Cause Court, is not a subordinate of the District Judge as regards proceedings in the Small Cause Court, because it is necessary that he should be vested specially by Government with those powers; but a Moonsiff, by virtue of his very appointment, is vested with such jurisdiction, and is ordinarily a subordinate of the District Judge, therefore he must, for the purposes of S. 197 be considered to be a subordinate of the District Judge.—Narayanasami Ayyar, 7 Mad, 183; (S. C) 8 Mad. Jur., 296. See also *ex parte* Makalingaiyan, 6 Mad., 191. Having regard to the terms of the Code of Civil Procedure of 1877, since passed, under which Judges of Small Cause Courts are subordinate to District Judges (see S. 2, Defs., District, District Court) probably this ruling would be superseded (see also S. 195 last para. *ante.*) A Municipal Corporation is not a public servant within the meaning of S. 21, Penal Code, and therefore it may be prosecuted without the sanction of Government. Empress *v.* Municipal Corporation of Calcutta, I. L. R., 3 Cal., 758.

The sanction for the prosecution of a Kulkarni for making a false report as a public servant required by S. 197 may be given by the Mamlutdar or by the Patel to whom such Kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose, though it may not be desirable that the prosecution of such hereditary officers as Kulkarni should be sanctioned by officers who themselves have such subordinate positions as those of Mamlutdar or Patel.—Mathoor Ramchundur, 7 Bomb., 64, *Crown Cases.*

The sanction of Government is necessary for the prosecution of any Judge, if complaint is made against him as Judge. The terms "not removable from his office without the sanction of Government" refer only to public servants.—6 Mad, xxii, App, Pro., March 29, 1870.

When the Government directed that a certain public servant should be prosecuted before the Magistrate of the District upon such charges as Mr. C. might be prepared to prefer, and the prosecution was not conducted by Mr. C., nor did Mr. C. prefer any charges, the conviction was quashed as without jurisdiction.—Venayak Divakar, 5 Bomb., 32, *Crown Cases.*

The Calcutta High Court has held (Cir. 20, Oct. 4, 1864; Wilkins, 114,) that this section relates to the offences specified in Chapter IX of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant, are not necessarily committed by him *as such public servant* in the sense in which these words are issued in the Penal Code; and unless committed in that character, must be regarded as the acts of *individuals in their private capacity;* charges, therefore, founded on such acts, do not need the sanction of Government, or other competent authority, before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.

Ch. XV.

Ss 198, 199.

The Bombay High Court, however, refused to follow this rule. The Court observed :—" It seems to us impossible to hold that S. 197 does not relate to offences such as those specified in Ss. 217—223 of the Indian Penal Code, which are not contained in Chapter IX of that Code. But we agree with the view, which was no doubt intended to be expressed in that Circular, *viz.*, that S. 197 relates only to those acts and omissions which are declared in the Penal Code to be offences when they are committed by a public servant."—Paishram Keshav, 7 Bomb., 61, *Crown Cases.*

Prosecution for breach of contract, defamation and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

(S. 142, para. 2.)

Chapter XIX relates to criminal breaches of contract :

Chapter XXI to defamation ; S. 493 to deceitfully causing a woman to cohabit with a man in the belief that she is lawfully married to him : S. 494 to bigamy ; S. 495 to bigamy with concealment of the former marriage : S. 496 to fraudulently going through a mock marriage.

Offences under chapters XIX, XXI, Penal Code, may be compounded. See S. 345.

Prosecution for adultery or enticing a married woman.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

(Ss. 478, 479.)

S 497 relates to adultery and S. 498 to enticing away a married woman. These offences may be compounded by the person entitled to complain. S. 345.

Where, after the commitment of the woman on a charge of adultery, the husband died, the Madras High Court remarked that though it is no doubt desirable that on the death of the husband, the aggrieved party, the charge of adultery should be withdrawn, it cannot be said that the death necessarily puts an end to the prosecution.—4 Mad., lv., *App.*, Pro. July 13, 1864. As S. 345 of this Code expressly allows a charge of adultery to be compounded by the person entitled to complain, this opinion may be modified.

It is immaterial whether the woman is an adult or a minor.—Jud. Commr., Panjab, 3637, August 6, 1862. A charge of the house trespass with intent to commit adultery may be inquired into without the husband's sanction.—Mad. H. Ct., June 1, 1868 ; Nov. 15, 1869.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

(Ss. 44, 144.)

Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the Local Government or District Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence. S. 191.

In BOMBAY all Magistrates of the first class have been empowered to act under S. 200, but if they are Honorary Magistrates, a special order in each case is necessary.—*Gaz.*, 1872, p. 1325; *id.*, 1873, p. 16.

A complaint means the allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence; but it does not include a report of a Police officer, S. 4 (*a*); a complaint in writing regarding a cognizable offence, made to a Magistrate need bear no stamp. Bomb. H. Ct., *Resn. in Chambers*, April 4, 1873.

Ch. XVI.
S. 200.

A petition containing a complaint or charge of any non-cognizable offence presented to any Criminal Court must bear a stamp of eight annas—Act VII of 1870 (Court Fees' Act) Sch. II, Art. 1, (b.) (Complaints of a public servant (as defined in the Penal Code), a municipal officer, or an officer or servant of a Railway company are exempted from stamp duty—S. 19, Cl. xviii.) If complaint of a non-cognizable offence or of wrongful confinement, or of wrongful restraint is not made by written petition, the complainant shall pay a fee of eight annas, when his examination is reduced to writing, unless the Court thinks fit to remit such payment. S. 18. If the person accused is convicted, the Criminal Court, in addition to the penalty imposed upon him, is bound to order him to repay to the complainant the fee paid on such application or petition or at the time of the complainant's examination, and also any fees for serving processes that may have been paid, and such sums are recoverable as if they were fines imposed by the Court. S. 31.

Complaints should be received at a fixed hour each day, and should be immediately numbered in the order of their receipt. They should then be entered in a book to be kept under the special control of the Magistrate himself.

Register of Criminal Complaints.

Serial No. for month.	Date.	Name of Complainant.	Thanah.	Offence charged, and under what section of what law.	Orders passed.	REMARKS

[Cal. H. Ct., Cir. 5A. Sept. 7, 1868; Wilkins, 1.]

If any Magistrate not empowered on that behalf erroneously in good faith (that is, acting with due care and attention,) takes cognizance of an offence on complaint, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529, (*e*).

Any District Magistrate or Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the District Magistrate who has taken cognizance of an offence may transfer it for inquiry or trial to any specified Magistrate in the District, (S. 192), and if any Magistrate, not being so empowered by law, erroneously in good faith transfers a case, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*f*). A case may be transferred at any stage of the proceedings, but not without good and sufficient reason if evidence has been taken in it, and after its transfer to another Magistrate the parties may require the evidence to be taken *de novo*.

The examination of the complainant is not to be a mere form, but an intelligent inquiry into the subject matter of the complaint, carried far enough to enable the Magistrate to exercise his judgment, or to determine whether there is, or is not sufficient ground for proceeding. Cal. H. Ct. Cir. 4, Feb. 25, 1873, Wilkins, 66.

The examination of the complainant is no mere formality. It is the result of the examination which ought to lead the Magistrate to determine whether he will put the machinery of the Criminal Courts in motion by the issue of a process to cause the accused person to appear before him. The preliminary examination of a complainant, if properly made, will frequently result in the summary dismissal of a complaint, and save an innocent person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interests of the public as well as with a view to the rapid despatch of work, the careful observance of the law in this particular is incumbent on Magistrates. —Smyth, p. 89.

The examination of a complainant should not be confined to generally asking him if the circumstances set forth in the complaint are true, and what evidence he has to prove it. *An intelligent inquiry into the subject-matter* of the complaint should be held, further proceedings would therefore frequently become unnecessary, and there would be a consequent diminution of inquiries which end in a discharge. Bom. H. Ct. Cir., p. 43.

S. 200 (*c*) enables a Magistrate to whom a case has been transferred after examination of the complainant to issue process on such examination, as he is not bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

(S. 145.)

A Magistrate may not be competent to take cognizance of a case on complaint (*a*) because he may not be empowered to receive a complaint (S. 191); or (*b*) the case may be regarding an offence committed beyond his local jurisdiction; or (*c*) it may be regarding an offence which he is not competent to try under Sch. II, Col. 8, (*d*), or to inquire into from his not being empowered to commit. The fact that the accused is an European British subject would not debar a Magistrate from taking cognizance of an offence although he might not be competent (S. 443) to try or inquire into the case, provided that he could take cognizance of a like offence if committed by another person. In such a case he is competent to issue process to compel the attendance of the European British subject before a Magistrate having jurisdiction to inquire into or try the case. S. 445.

Postponement of issue of process.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from

Ch. XVI.

S. 203.

time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

(S. 146.)

It will be seen that no Magistrate below the second class can order a local investigation under this chapter, the reason probably being that only non-cognizable cases or petty cases would be transferred for trial to a Magistrate of the third class which from their nature would not require investigation. It may, however, occasionally be necessary to order an investigation into a non-cognizable offence. S. 155 declares that no Police officer shall investigate such a case without the order of a Magistrate of the first or second class having power to try or commit such case for trial, or of a Presidency Magistrate. A Police officer not in charge of a Police station acting under S. 155 would have no power to arrest without a warrant, but if ordered by a Magistrate under S. 202, (that is, when the Magistrate has reason to distrust the truth of the complaint) he would apparently be competent to arrest without warrant as such power is expressly withheld from any person making the investigation other than a Magistrate or Police officer. If a Magistrate not being empowered by law on that behalf erroneously in good faith orders, under S. 155, the Police to investigate a non-cognizable offence his proceedings shall not be set aside merely on the ground of his not being so empowered—S. 529 (*b*).

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the com-

plaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding.

(S. 147, para. 1.)

In dismissing complaints under this section of the Code, Magistrates will generally act in accordance with the terms of S. 95 of the Penal Code which declares that—

"Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

There is no appeal against an order dismissing a complaint under S. 203. The dismissal of a complaint under S. 203 is not an acquittal (S. 403, Explan.) but a complaint so dismissed cannot be reheard except on an order made under S. 437 which provides that the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

After complaint made and issue of warrants, the Magistrate of the District is not competent to withdraw the case to his own file, suspend the warrants and dismiss the complaint on the ground that, in his executive capacity, he had previously made some inquiry into the matter out of which the complaint arose, and that, on information so gained, he was of opinion that the complaint ought to be rejected. After issue of warrants, the case ought to go on in due course according to the procedure prescribed by the Code, unless something arises to show that the Magistrate who had issued the warrants had, from some cause or other, made a wrong exercise of his discretion. The Magistrate of the District ought to have proceeded with the case from the stage at which he found it, and by not doing so he was held to have committed a material error. His order was accordingly set aside.—Rughoo Parirah, 19 W. R., 28; (S. C.) 10 B. L. R., 26 *App.*

A complaint cannot be dismissed, because it was distrusted, without the preliminary examination of the complainant—not even on the report of the Police to whom it may have been referred.—Dullalee Bewa, 3 B. L. R., 53. The correctness of this opinion seems doubtful under the present Code.

A Magistrate is competent to dismiss a complaint on persual of the record and without taking further evidence, if he has first regularly withdrawn it from a Magistrate subordinate to him.—Niamutoolla, 14 W. R., 63. But he cannot, without dismissing the case regularly before him, commence a prosecution for false complaint after the Police have reported the case to be false. The original case must first be finally dismissed.—Belilias, 12 W. R., 53; 2 B. L. R., 151, *App.* *In re* Gyan Chunder Roy, 8 Cal. L. R., 267; I. L. R., 7 Cal., 208.

A Magistrate is bound to examine, and reduce to writing the examination of the complainant before dismissing a complaint. He

Ch. XVII. — S. 204.

should not return the complaint which forms part of the records of his office except under S. 201. Mad. H. Ct., Pro. June 10, 1869, Weir, 165. But if the complaint made is, on the face of it no offence, the Magistrate may refuse to entertain it. *Id.*, Pro. July 24, 1865, Weir, 167. See also Sheikh Erad Ali, 4 Cal. L. R., 534 where it was held that a complaint had been improperly dismissed on a Police report, the Magistrate having refused to examine the complainant who appeared before him and applied to have the witnesses examined to establish his complaint. A complaint should not be dismissed merely because it has been made to a Magistrate having jurisdiction rather than to the head of a village. Mad. H. Ct., Pro. Dec. 18, 1873, Weir, 165. After a complaint has once been dismissed, no other Magistrate can entertain it without an order made under S. 437. Mad. H. Ct., Pro. March 28, 1878, Weir, 167.

How far after a case has been dismissed on a Police report under S. 203 a Magistrate can order the prosecution of the complainant on a charge under S. 211, Penal Code, has formed the subject of many judgments of the High Courts. See note to S. 195.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Issue of process.

204. If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which according to that column a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

(Ss. 147, 148, 149.)

In Bengal and in Assam a fee of eight annas is charged for a summons in respect of one person, or of the first two persons residing in the same place, and four annas for every additional person named therein. *Bengal Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596; Wilkins, 811.

In MADRAS, in non-cognizable cases, the same fee has been fixed for a summons as in Bengal. *Mad. Gaz.*, Aug. 5, 1873.

The process is one whether one or more persons be named therein, and whether such persons reside in one place or not, but an additional fee of four annas is chargeable in respect of every additional person not being the second person of more than two residing in the same village named in the summons: thus if the summons include one person residing in village A, and a second person residing in village B, the additional fee is chargeable in respect of such second person.—Cal. H. Ct., Cir. 13, May 12, 1874. But in MADRAS only half these rates are chargeable if the process is to be served within a radius of six miles from the Court-house, the villages within such radius to be determined by the Judge of each Court, and to be notified in a conspicuous place in the Court-house. Power is given to a Magistrate to excuse indigent persons who may be unable to pay the prescribed fees. *Mad. Gaz.*, Sept. 10, 1873.

In certain districts in BENGAL and ASSAM, in every case in which a process has to be executed at a distance of more than 25 miles from the Court from which it is issued, an additional fee of one-fourth is chargeable; and if more than 50 miles, the fee is increased by one-half. *Bengal Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596, Wilkins, 83.

BENGAL.

Rajshahye.	Beerbhoom.
Bogra.	Chittagong.
Dinagepore.	Noakhally.
Malda.	Singbhoom.
Rungpore.	Lohardugga.
Bancoora.	Maunbhoom.
Hazareebagh.	

ASSAM.

Nowgong.	Cachar.
Sylhet.	

In BOMBAY the fee chargeable on a summons in a case under Chapters XIX, XX, XXI of the Penal Code is *four annas*, and *one anna* in every other non-cognizable case, and it is only in this latter case that the Magistrate may remit the fee on being satisfied that the complainant has not the means of paying it. *Gaz.*, 1874, p. 580.

In BRITISH BURMAH, in non-cognizable cases, a fee of *eight annas* is chargeable on a summons on a witness, and *one rupee* on a summons on an accused person; no further charge is to be made for boat-hire; a Magistrate who has power to entertain cases on complaint preferred directly to himself, can, on special grounds, to be recorded, remit the fee on any process issuing from his Court. No fee is chargeable on any process issued by a Criminal Court of its own motion. *Gaz.*, 1873, Part II, p. 197.

In certain districts in BENGAL where during a portion of the year travelling except by boat is impracticable, boat-hire may, when it has to be incurred, be charged in addition to other fees. The rates at which such boat-hire shall be charged shall be fixed from time to time by the District Magistrate (in *Assam* subject to approval by the Sessions Judge) and shall be sufficient only to cover on the whole the actual cost of such boat establishment as

BENGAL.

Jessore.	Backergunge.
Pubna.	Mymensing.
Dacca.	Tipperah.
Furreedpore.	Noakhally.

ASSAM.

Sylhet.	Nowgung.
Kamroop.	Lukhimpore.

Ch. XVII. — S. 205.

it may be necessary to maintain for the purpose of serving processes in cases not cognizable by the Police. *Bengal Gaz.*, 1879, p. 304; *Assam Gaz.*, 1879, p. 596; Wilkins, 84.

For warrants of arrest the following fees are charged: in BENGAL and ASSAM one rupee in respect of each person named therein.—*Bengal Gaz.*, 1879, p. 304: *Assam Gaz.*, 1879, p. 596; Wilkins, 81: in MADRAS twelve annas (*Gaz.*, Aug. 5, 1873).

But only half rates are chargeable in Madras if the process is to be executed within a radius of six miles from the Court-house; and it has further been ordered that, if the warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee of the same rate shall be levied for every fifteen days or portion of fifteen days until return is made, provided that such delay is not attributable to the officer of the Court. Magistrates may forego the collection of fees for the service of processes in non-cognizable cases, where the parties are unable to pay them.—Mad. Govt. Pro, Sept. 10, 1873, 9 Mad. Jur., 30.

In BRITISH BURMAH *two rupees* is the fee chargeable on a warrant of arrest in a non-cognizable case. *Gaz.*, 1873, p. 197.

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(S. 151.)

It is not only in summons cases that a Magistrate may dispense with the personal attendance of the accused, and permit him to appear by his pleader, but whenever he issues a summons, which it will be seen from S. 205 he can, in the exercise of his discretion, do in warrant cases.

This also appears from the latter part of S. 205 which enables a Magistrate to direct the personal attendance of the accused in an inquiry or trial, for it rarely happens that in an inquiry a summons will ordinarily issue.

"Pleader" used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practice in such Court, and includes (1) an advocate, a pleader and an attorney of a High Court so authorized and (2) any mookhtar or other person appointed with permission of the Court to act in such proceeding S. 4 (*n*).

If the personal attendance of the accused be dispensed with, he should be represented by an agent, who should be provided with a mookhtarnamah bearing a stamp of eight annas.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

(S. 143.)

Except a Presidency Magistrate no Magistrate can commit direct to the High Court unless the person charged is an European British subject, or charged jointly with an European British subject, with an offence punishable with death or transportation for life. S. 447. Only a Magistrate of the first class who is also a Justice of the Peace and an European British subject can commit such a case. Commitments should be made ordinarily to the Court of Session. S. 447.

In BENGAL all Magistrates of the second class have been empowered to commit to the Court of Session (*Gaz.*, 1873, p. 79); so also in the PUNJAB (*Gaz.*, 1878. p. 75). In MADRAS this power has been conferred on all Magistrates (*Gaz.*, 1873, p. 717).

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or, High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

(S. 189.)

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in the manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Ch. XVIII.

S. 208. **Process for production of further evidence.**

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

(Ss. 190, 357, 362, para. 1.)

The fees for a process are stated in the note to S. 204. The first application for the summons of a witness or other person to attend either to give evidence or to produce a document is exempt from stamp duty,—Court Fees' Act (VII, 1870); S. 19, cl. xiv; otherwise it should bear a stamp of eight annas, *Id.* Sch. II, Art. 1 (*b*).

The following orders have been issued by the Cal. High Court regarding the examination of witnesses before Magistrates:—

(*a*) The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If from unavoidable causes an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner.

(*b*) Chief Magistrates of districts should carefully supervise the returns of their subordinates, as they will be held responsible for the correction of irregularities. Cal. H. Ct., Cir. 12, Nov. 27, 1865. Wilkins, 70.

(*c*) Every witness shall be examined *vivâ voce* in open Court.

(*d*) A Magistrate or Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

(*e*) If, after the examination of a witness has commenced, the Magistrate or Judge is compelled to attend to any other business, the examination of the witness shall be suspended as long as such other business is being attended to.

(*f*) The examination of a witness shall not be interrupted for the purpose of enabling the Magistrate or Judge to attend to other business unless such business is of an urgent nature.

(*g*) It shall be the duty of every Appellate Court subordinate to the High Court to examine the Memorandum of the evidence made by the Subordinate Court, and to report to the High Court cases in which it shall appear that the above Rules have not been strictly and properly attended to.

(*h*) The evidence of every witness shall invariably be recorded in the presence of the officer who may decide the case, except in cases otherwise specially provided for it under sections 349, 350 of the Code of Criminal Procedure, in which the recalling and re-examination of the witnesses is optional.

(*i*) After the examination of witnesses has commenced, the trial or inquiry should be proceeded with until all the witnesses in attendance have been examined, those for the prosecution being first examined; and if any witness be detained for a longer period than two days, the Magistrate should record a Memorandum, stating the reasons of such detention.

(*j*) When it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible, and no person accused of any offence shall be remanded for any period exceeding fifteen days (section 344 Code of Criminal Procedure).

(*k*) Every Magistrate shall sit daily and punctually at the hour appointed for the opening of his Court, unless prevented by circumstances which are to be recorded in the proceedings of the Court. Cal. H. Ct., Cir. 6, May 16, 1864. Wilkins, 77.

All Magisterial officers shall, in the examination of prosecutors, witnesses, and prisoners, record in each deposition, statement, or defence the following particulars, which are indispensably necessary for the future identification of the parties examined, *viz.*, the name of the person examined, the name of his or her father, and if a married woman, the name of her husband, the religion, caste, profession, and age of the party or witness, and the village and pergunnah in which he or she resides. Cal. H. Ct., Cir. 19, Sept. 17, 1864; Wilkins, 78. Bomb. H. Ct. Dec. 27, 1872; *Bomb. Gaz.* 1873, p. 20.

Where an accused is brought before a Magistrate, that officer has no authority further to detain him in custody or to remand him to prison, without some reason made manifest to him, either in the shape of sworn testimony given before him or in some other form which can be put on the record, and which is sufficient to justify him in sending the accused to prison.—Abdool Kadir. 11 B. L. R., 8, *App.*

Any Magistrate inquiring into or trying any case may permit any person other than an officer of Police below the rank of Police Inspector to conduct the prosecution; but no person other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission. Any person conducting the prosecution may do so personally or by a pleader. S. 495.

Every person accused before any criminal Court may of right be defended by a pleader. S. 340.

The evidence would be recorded in the manner provided by Ss. 356, 357, 359, 360. Special provision in this respect is made by S. 362 for evidence taken in the Court of a Presidency Magistrate.

If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant remand the accused, if in custody. Provided that no Magistrate shall remand an accused person to custody under this section

Ch. XVII. — S. 209.

for a term exceeding fifteen days at a time. Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge. S. 344.

In a serious case a Magistrate is not only justified but bound to adjourn the inquiry or trial if further evidence, *i. e.*, the evidence of the man robbed, is necessary. It is obvious that if the administration of justice in serious cases depended on the party injured choosing to appear, the procedure of the Court would encourage acts of concealment of crimes which are themselves criminal offences. Mad. H. Ct. Pro. Sept. 12, 1864; Weir, 177.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(S. 195.)

It should be noted that the purpose for which an accused is to be examined is limited, *viz.* to enable him to explain any circumstances appearing in the evidence against him. S. 364 prescribes the manner in which the examination of an accused person shall be recorded.

The following observations of the Calcutta High Court (*per* Kemp and E. Jackson, JJ.) in the case of Krishto Dhoba (14 W. R., 16) deserve especial attention in connection with S. 209, and are altogether in accordance with the Circular of the same Court, which follows it :—

"I have for some time felt from examination of criminal trials, that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough inquiry which, I think, they ought to make previous to commitment. In a case of murder more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case, in order to ascertain whether the accused is guilty or innocent and to examine the accused on the facts which bear against him. One of the points of the evidence in this case which led to presumption of the accused's guilt was, that he had been absent about the time the murder was committed. His statement as to where he was at that time should have been recorded, and should also have

been thoroughly enquired into. It is not sufficient to say that the accused might bring witnesses to prove his innocence at the trial. It is possible the accused may not know the names of the witnesses; and if the witnesses can give evidence in his favour to exculpate him, he should not be committed. A long time elapses before a trial at the Sessions comes on, and witnesses cannot then give as clear evidence, more especially as to time and duty, as when the facts have only lately occurred. I think every enquiry should have been made previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate not to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. There is a clause in the Procedure Code which empowers Magistrates to commit without inquiry into the defence of the accused. I believe the discretion given by this clause is much abused. It may be applied in certain cases, but in serious charges of murder, when the life of the accused is at stake, I think this clause should not be acted upon, because no certainty of the accused's guilt can arise until his defence is negatived, and proof that his defence is false is frequently very strong evidence in favour of the prosecution. If the result of the inquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit and leave the Sessions Court to decide which is the true story."

The following are the terms of a Circular, 13, July 28, 1864, issued by the Calcutta High Court to the Magistrates subordinate to it:

"Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the inquiry before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the enquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as by S. 209 it is discretionary with a Magistrate to discharge or to commit an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give, when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

The Calcutta High Court (Cir. 3, May 24, 1880; 65 Wilkins,) has ordered that the examination of an accused shall contain his or her name, that of his or her father, and if a married woman, that of her husband, the religion, caste, profession, and age of the accused person and the village or pergunnah in which he or she resides. Also Bomb. H. Ct., *Gaz.*, 1873, p. 20.

Ch. XVII.

S. 210.

The examination of the accused should not be recorded until a complaint has been made. A criminal trial cannot properly be commenced by such examination (Cal. H. Ct., 627, 1863), but an admission of crime, fairly made, and after due warning, is not inadmissible, because at the time it was made no formal accusation had been made against the party making it.—Ramchurn Chamar and others, 4 W. R., 10.

When an accused person wishes to make a statement the Magistrate is bound to record it. *In re* Abdool Guffoor, 10 Cal. L. R., 51.

When death appears to have resulted from injuries voluntarily inflicted by the party accused, a Magistrate ought to be very careful and not take it upon himself to absolve the accused from the graver charge of culpable homicide or murder and to convict of hurt or grievous hurt only, unless it is quite clear that there is not sufficient evidence to warrant a commitment to the Sessions Court on such charge.—Cal. H. Ct. Cir. 9, Sept. 6, 1869. Wilkins, 103.

An order of discharge may be passed at any stage of the case if, for reasons to be recorded by him, the Magistrate considers the charge to be groundless, otherwise the Magistrate must examine "all such evidence as may be produced by the prosecution." S. 208.

An order of discharge does not operate as an acquittal. S. 403.

If in the opinion of the Court of Session or District Magistrate, the case is triable exclusively by the Court of Session and the accused has been improperly discharged by an inferior Court, the Court of Session or District Magistrate may order him to be arrested and after notice to the accused to the same either order a fresh inquiry to be held or the accused to be committed for trial of the offence of which he has been improperly discharged. S. 436.

But in a warrant case, which may be a case regarding an offence triable exclusively by a Magistrate, or by a Magistrate and a Court of Session, in which any accused person has been discharged, the High Court, Court of Session or District Magistrate may order further inquiry to be made. S. 437. This is a new provision of the law in the consequence of several judgments of the High Court holding that after an order of discharge in a warrant case, the trial could not be re-opened except by order of the High Court as a Court of Revision. See Mohesh Mistree, I. L. R., 1 Cal., 282: Mary Donelly, I. L R., 2 Cal., 405; Gowdapa bin Venkugowda, I. L. R, 2 Bomb., 534 &c., &c. The law as now enacted in S. 437 places no restriction on the exercise of the power to order fresh inquiry in a case in which the accused has been discharged, and that inquiry can be held by whomsoever the Court directing it may order it to be held.

When charge is to be framed.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained. and copy furnished, to accused.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

(Ss. 195, 196, Expl. III; S. 198, para. 1; S. 199.)

Sch. V, No. 28 contains various forms of charges. Under S. 35 of the Court Fees Act (VII of 1870) the Governor General of India in Council has remitted the fees payable on a copy of a charge furnished under S. 210. *India Gaz.* 1873, p. 520.

S. 350 provides for the case of a Magistrate vacating his office before concluding an inquiry commenced by him and enables his successor to continue the proceedings, or under certain circumstances requires him to recommence the inquiry and rehear the evidence.

List of witnesses for defence on trial.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

(S. 200, paras. 1, 3.)

S. 216 lays down the course to be taken by the Magistrate in summoning fresh witnesses.

Power of Magistrate to examine such witnesses.

212. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 211.

(S. 200, para. 2.)

Order of commitment.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as

Ch. XVII.

S. 213.

the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(S. 198, para. 1; S. 200, para. 2.)

The reasons for commitment should set forth with exactness the proof against each particular prisoner and the manner in which the offence has been substantiated.—Kodai Kahar, 5 W. R., 6.

A Magistrate should not commit the accused person for trial but should discharge him, if the act or omission charged does not amount to an offence on account of the existence of any of the general exceptions contained in Chapter IV of the Penal Code (Cal. H. Ct. Cir. 1, Feb 12, 1867); but this rule does not apply to cases in which it may appear that the accused person has committed an act amounting to an offence triable exclusively by the Court of Session, at a time when by reason of unsoundness of mind he was incapable of knowing the nature of that act, or that he was doing what was wrong or contrary to law. Such cases should be committed for trial if the accused appears to be sane at the time of inquiry. S. 469.

The duty of a committing Magistrate is to ascertain whether by the evidence of the prosecution a *primâ facie* case has been made out against the accused. Magistrates are apt to suppose that it is incumbent on them to satisfy themselves fully of the guilt of the accused before making a commitment. The idea is erroneous. Where there is sufficient ground for putting an accused person on his trial, the Magistrate should make a commitment.—Moha Singh, 3 All., 27.

A Magistrate should, on no account, commit a person for trial by a Court of Session, unless there be good ground on the evidence for expecting a conviction (3 W. R, 10, C. L.); but if he is in doubt, where the evidence for the defence is nearly as strong as that for the prosecution, he should commit. If the evidence for the prosecution is manifestly false, of course there should be no commitment. 8 W. R., 12, C. L.

When an offence falls under two sections of the Penal Code, the one general and cognizable by a Magistrate, the other specifying aggravated circumstances and cognizable by the Sessions Court only, the jurisdiction of the Magistrate is not necessarily ousted. The Magistrate must determine whether he will dispose of the case under the general section, or commit the accused to the Court with a discreet regard to the gravity of the circumstances of the particular case.—Mad. H. Ct. July 19, 1871; March 18, 1868; Nov. 26, 1867; Nov. 4, 1865.

When death appears to have resulted from injuries voluntarily inflicted by the party accused, a Magistrate ought to be very careful and not take it upon himself to absolve the accused from the graver charge of culpable homicide or murder and to convict of hurt or grievous hurt only, unless it is quite clear that there is not sufficient evidence to warrant a commitment to the Sessions Court on such charge.—Cal. H. Ct. Cir. 9, Sept. 6, 1869.

When the offence charged is triable by a Magistrate as well as by a Court of Session, the Magistrate should exercise his own discretion in deciding whether the case should be committed, or whether the justice of the case will be fully satisfied by a sentence which he himself is authorized to pass. The amount of property stolen is one very proper

point for consideration in determining this question.—Mad. H. Ct. Pro., July 23, 1866. Weir, 134.

If two or more persons are jointly indicted, and the jurisdiction of the Magistrate is ousted in the case of one, the Magistrate should hold a preliminary inquiry and commit both or all for trial before the Court of Session.—Mad. H. Ct., March 18, 1868.

When several persons are charged with offences of various degrees, arising out of the same act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if *any* of the accused is charged with an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by the Court of Session.—Agra Sud. Ct. Cir. 14, 1862; Cal. H. Ct. Cir. 16, May 27, 1862; Cir. 13, Aug. 29, 1870, Wilkins, 100. The term transaction here used must not be understood to extend to a riot in which different parties are concerned not having the same "common object." Thus when a riot is charged, and the Magistrate is about to commit the contending parties for trial, not only should separate charges be drawn up against each party, but separate trials should be held, since the offences of each party are distinct and separate. Durzoolla Khan, 9 W. R., 83; Hosein Buksh Sheikh and others, 6 Cal. L. R., 521. Similarly, a separate trial should be held on each charge of "giving false evidence," although the statements forming the basis of the charge may relate to the same subject-matter. Two persons cannot be joined in one indictment.—10 W. R., 2, C. L.; Mad. H. Ct., March 15, 1867. Weir, 268; Chand Khan, 2 Leg. Rem., 183.

When more persons than one are accused of the same offence, or if different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be tried together or separately, as the Court thinks fit, and the provisions contained in Ss. 221—238 shall apply to all such charges. S. 239. The Illustrations to that section show the meaning to be put on the expression "same transaction."

A Magistrate having committed a person who appeared before him by agent [S. 205], the Calcutta High Court (Huronath Rai, 2 W. R., 50) held that the commitment was not necessarily illegal; but as the agent had not been required to give in a list of the witnesses whom he wished to have summoned for his principal, the Court directed the Magistrate to make the demand.

A Magistrate who is about to go on leave, exercises an improper discretion in committing to the Court of Session, a case properly triable by the Magistrate, merely on the ground that the witnesses for the defence are not in attendance, and that it would be inconvenient for his successor to commence the trial anew, but in doing so he does not commit an illegality such as would justify the High Court in quashing the commitment.—Bomb. H. Ct. *Resn. in Chambers*, 25th July, 1876.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an

offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

An European British subject can be committed to the High Court *direct* by a Magistrate other than a Presidency Magistrate only when the offence charged is punishable with death or transportation for life (S. 447), but the trial of an European British subject arising out of a commitment to a Court of Session may be held by a High Court either by express order of that Court, or if it be referred by the Sessions Judge because in his opinion he cannot pass an adequate sentence. S. 449.

Whether one or separate trials would be held would entirely depend on the action taken by the accused, when before the High Court. S. 452.

Quashing commitments under section 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

(S. 197, last para. and Expl.)

These words are not used in an exclusive sense so as to deprive a High Court of its powers of revision to cancel a commitment made other than by a competent Magistrate. Luchman Singh, I. L. R., 2 All. 308; per Stuart, C. J. (Spankie, J. *dis.*)

But if a commitment has been made by a Magistrate or other authority without jurisdiction in that respect, and the Sessions Court considers that the accused has been prejudiced or if an objection to the proceedings of the committing officer as being without jurisdiction has been made before the order of commitment, the Sessions Court can quash the commitment and direct fresh inquiry by a competent Magistrate. S. 532.

If in the opinion of a Sessions Judge, a commitment made to his Court is illegal, he should refer the case for the orders of the High Court (Cal. H. Ct., Cir. 7, June 20, 1864); but the insufficiency of legal evidence against the prisoner is no ground for such reference.—Gokul Bandari, 1 W. R., 8.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

(Ss. 358, 359.)

The accused person, on commitment to the Court of Session, gave in his list of witnesses. Among these two did not appear, the summons not being served on one, and no summons having been issued on the other. On the trial, the pleader for the defence asked for an adjournment on account of the absence of these witnesses, but was refused. The High Court, on appeal, held that accused was entitled, as a matter of right, to have these two witnesses examined, and accordingly, under S. 428 directed their evidence to be taken.—Prosunno Coomar Moitro, 23 W. R.. 56.

S. 216 does not permit a Magistrate to inquire generally into what the defence of the accused person is to be, and to consider whether, on hearing the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses of the accused. It is intended rather to provide, that when among the persons named by the accused as witnesses for the defence, the Magistrate considers that any particular witness is included for the purposes of vexation or delay, he is to exercise his judgment and inquire whether such a witness is material. Raj Coomar Singh and others, 2 Cal. L. R., 62.

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Ch. XVII.

S. 218.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

(S. 360.)

A Magistrate cannot require recognizances for the attendance at the Sessions or High Court of witnesses cited for the defence who have never appeared before him. Mad. H. Ct. Pro. Oct. 19, 1876; Weir, 252.

It will be the duty of the Magistrate, in order prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Sudder Station before they are actually required, and they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.—Cal. H. Ct. Cir. 4, dated May 6, 1868.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c, to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(Ss. 198, 202.)

Sch. V, No. 27 contains a form of notice of commitment by a Magistrate to the Government Pleader.

The following rules issued by the Calcutta High Court (Cir. 4, May 6, 1868) should be read with S. 218:—

"The Judge will, in the first week of December in each year, fix the number of Sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year); and the Magistrate of the District, in communication with all the Subordinate Magistrates who exercise the power of committing to the Sessions and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each Sessions, a calendar of all such cases in the form annexed:—

Calendar of Accused Persons for trial before the Court of Session.

Sessions of 187

No. of Case.	Committing Officer	Number and Name of Accused	Charges and Section I. P. C.	Date of Offence.	Date of apprehension or appearance to summons.	Date of Commitment.	In Jail or on Bail.

"The names of the witnesses should be placed on the back of the charge sheet. The Magistrates will be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Session, in order to avoid the needless detention of accused persons for prolonged periods.

"Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the annexed form:—

Form of letter to be sent by Committing Officers, through the Magistrate of the District, to the Judge.

To

THE SESSIONS JUDGE OF

SIR,

I beg to report that I have this day committed to take his trial before the Court of Sessions the person named in the margin on the charge specified below.

I have, &c.,
A. B.,
Magistrate (as the case may be).

CHARGE
1
2

"It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will

Ch. XVII.

S. 218.

be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up civil business thereafter.

"Prosecutors and witnesses will be bound over to appear 'at the next Criminal Sessions commencing on..... .....'

"But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session, that such parties may not be brought from their homes to the sudder station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

"The directions herein contained for committing Magistrates are to be observed, so far as they are applicable, by Civil Courts and other authorities committing persons for trial at the Sessions.

"The names of the witnesses should be entered at the back of the charge sheet."—Cal. H. Ct. Cir. 5, Oct. 14, 1879, Wilkins, 101.

In Madras, under orders of the High Court, a Register of Preliminary Inquiries is kept by Magistrates of every grade in committing an accused person for trial before the Court of Session, and the Magistrate is directed to place with the record an extract of the case taken from the Register of Preliminary Enquiries.

In the Panjab the fixing of the date and place of trial of a case is with the Sessions Judge, due notice being sent to the committing Magistrate.—Smyth, p. 96. But jail deliveries of each District should be held at intervals of not more than ninety days, if there are prisoners awaiting trial, the selection of the time being left to the Judge.—*Id.*, p. 98.

The following form of Calendar for commitments to Courts of Session in the Panjab has been issued by the Chief Court [Book Cir. 1—87 of 1873, *Gaz.*, 1873, Part III, p. 41,] the model form being filled in as an illustration.

Case committed to the Sessions Court of the Commissioner of Umritsur, by the Assistant Commissioner of Umritsur, on the 1st day of July, 1872.

1	2	3	4	5	6	7
Prisoner's name, Parentage, Caste, Residence.	Offence charged, with Law, applicable and date of Commission.	Date of Apprehension.	Whether in Prison or on Bail.	Witnesses for Prosecution, with a brief indication of the nature of evidence shewn against name of each.	Material Evidence, *i. e.*, weapon, clothes, &c.	Witnesses for Defence.
I.—Sona Sing, son of Roda; caste, Rajput; residence, Aliwal, Umritsur District; age 40. II.—Alla Sing, son of Lehna Sing; caste, Jat; residence, Tung, Umritsur District; age 40. III.—Bulaki, son of Gulaba; caste, Jutalia; residence, Aliwal, Umritsur District; age 30.	*Against I & II.* Murder of Nika Sing, on 25th June, 1872, S. 302, Indian Penal Code. *Against III.* Furnishing false information to public servant (S. 177, Indian Penal Code), on 25th June.	*I* 25th June. *II & III.* 26th June.	*I & II* in prison. *III.* On Bail.	1. Dr. A. B., Civil Surgeon—to cause death. 2. Devi Ditta, son of deceased—eye-witness of murder; identifies body. 3. Pertab Sing—to finding of earring and finding and identity of bloody knife, and identity of body. 4. Gurbas 5. Gulaba son of Mohomda } Eye-witnesses. 6. Bahadur 7. Dyal Sing } To finding and identity of bloody garment and to apprehension of accused I and II. 8. Ahmed Buksh, Constable. } Apprehended the two accused; was present when bloody garment was found; received No. III's report. 9. Ramdoss 10. Naran Sing } Hearing a cry ran to spot; saw two accused, I and II running away; heard deceased's dying declaration. 11. Din Mohamed } Helped to carry body to the Saddar; witness to enmity. 12. Mussamut Jewni—identifies earring. 13. Gulaba, son of Ghulam—identifies earring. 14. Jhanda—identifies bloody knife. 15. Alladin—saw deceased in company of prisoners I and II. 16. Bansidhar 17. Sant Sing } To character.	Bloody knife, earring, bloody garment.	FACT. *Prisoners I & II.* Sheo Bhagat, Gunga Pershad, Devi Din. CHARACTER. Budh Sing, Mohomda.

Ch. XVII.

S. 218.

The following instructions have also been issued on the subject:—

The reasons for commitment required by the Code of Criminal Procedure may be written either in the Calendar Sheet or on a separate sheet as may be most convenient.

The papers, which, upon commitment being made, will have to be transmitted to the Court of Session, will be—

(*a.*) Copy of the charge.
(*b.*) Calendar.
(*c.*) Reasons for commitment.
(*d.*) Record of original inquiry.

Besides these any weapon or other article of property necessary to produce in evidence must be sent.

The papers to be transferred to the Sessions file from the record of original inquiry are briefly those received in evidence by the Sessions Court. Smyth, p. 95.

The following is a list of the papers which will ordinarily have to be transferred:—

(*a.*) Evidence of Medical witness.
(*b.*) Report of Chemical Examiner.
(*c*) Examination of accused before Magistrate.
(*d.*) Evidence of present witness recorded at preliminary inquiry when Sessions Judge grounds his judgment thereon.
(*e.*) Certificate of previous acquittal or conviction.
(*f.*) Confession of accused when relevant.
(*g.*) Statement of persons who cannot be called as witnesses including dying declaration.

Such papers will be transferred to the Sessions Court, and an endorsement to that effect will be made upon each.

In cases of commitments by Native Magistrates, the Calendar shall be written in the vernacular of the Court, and so submitted.

The Calcutta High Court has directed (8 B. L. R., 5, *Rules*, &c.; Wilkins, 100) that the record referred to in this section, which is to be forwarded to the Court of Session, shall include—

First.—The proceedings by which the case has been originated in the Magistrate's Court.

Second.—All papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons (if any) and if returned; the warrant, and the return, or other documents showing how and when it has been executed; also any such warrant and the report showing how it has been executed.

Third.—The report, if any, on such inquiry as that under S. 205.

Fourth.—The orders, if any, sanctioning the prosecution, when such sanction is necessary.

Fifth.—The order, if any, withdrawing or transferring the case from one Court to another.

When a confession or examination of accused person made before a Magistrate forms part of the evidence against the persons committed for trial to the Court of Sessions, it should be accompanied by a translation into English fairly written out. Cal. H. Ct. Cir., 4, Aug. 10, 1862. Wilkins, 105.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

(S. 357, para. 2.)

A witness so examined, not in the presence of the accused person, must attend before the Court of Session or High Court. If he should die or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without unreasonable delay or expense, his deposition so taken before the Magistrate, but in the absence of the accused person, will not be evidence before the Court of Session or High Court, because the accused person had not the opportunity to cross-examine (S. 33, Act I, 1872), so that every endeavour should be made to examine all such witnesses in the presence of the accused person.

If any person affected by an order passed by a Criminal Court desires to have a copy of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith; provided that he pay for the same, unless the Court for some special reason, thinks fit to furnish it free of cost, S. 548.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

If it is a bailable offence the Magistrate should admit the accused to bail, unless he thinks fit instead of taking bail to discharge him on executing a bond without sureties for his appearance, S. 496; but if a person is accused of a non-bailable offence he shall not be released on bail if there are reasonable grounds for believing that he is guilty of the offence of which he is accused, (S. 497); there would be such grounds after he has been committed for trial by a High Court or Sessions Court. The High Court or Sessions Court may, however, in any case, direct that any person may be admitted to bail. S. 498.

CHAPTER XIX.

OF THE CHARGE.

In the trial of summons cases no formal charge shall be framed (S. 242) but the accused shall be asked to show cause why he should not be convicted of the offence of which he is accused, the particulars of that offence being stated to him. In warrant cases after the evidence for the prosecution has been taken and the accused examined, if the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and can be adequately punished by him, a charge shall be framed. S. 254.

In cases regarding security for good behaviour in which the procedure should be as in warrant cases, it is especially provided that no formal charge shall be framed. S. 117.

In summary trials no formal charge need be recorded. Ss. 262, 263.

In inquiries when the evidence affords sufficient grounds for committing the accused for trial a charge should be drawn up. S. 210.

No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby. If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge. S. 535.

No error, omission or irregularity in the charge shall necessitate the reversal or alteration of a finding, sentence or order coming before a Court of confirmation appeal or revision unless it has occasioned a failure of justice. S. 537. And on a commitment made without a charge or with an imperfect or erroneous charge, the Sessions Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter it. S. 226.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

Ch. XIX.

S. 221.

(*d*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in thosee words.

(S. 439.)

With reference to para. 5 and Illustration (*a*), S. 105 of the Evidence Act (I of 1872) should be read—

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

"*Illustrations.*

"(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

"The burden of proof is on A.

"(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

"The burden of proof is on A.

"(*c.*) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

"A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

"The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A."

In the last para. the law as now enacted is slightly altered from S. 439 of the Code of 1872 which it replaces. The latter ran thus: and "if it is intended to prove such previous conviction for the purpose of affecting the punishment *which is to be awarded.*" For the words in italics S. 221 of the present Code has substituted "which the Court is competent to award," so that it would seem that although a previous conviction brought against the accused might influence a Magistrate in passing sentence, the accused would not necessarily be called upon formally to plead to it if the sentence is one which the Magistrate "is competent to award." It will probably nevertheless be considered necessary to give the accused an opportunity of showing that he was not the person so convicted. A previous conviction apparently would not form part of the formal charge unless the Magistrate makes it the ground of commitment to the Sessions or High Court or of referring the case in certain Districts to the District Magistrate invested with extraordinary powers under S. 30. S. 348.

Where the previous conviction did not form part of the charge, the enhanced sentence was set aside, and the Sessions Judge directed to reopen the trial with the same set of jurors on that charge, giving the accused an opportunity of making a fresh defence to it. The High Court remarked that the question of proof of previous conviction is one of fact which ought to have gone to, and been determined by a jury.—Eshan Chunder Dey, 21 W. R., 40.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and person.

(S. 440.)

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobelience charged and the law infringed.

(S. 441.)

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

(Act XVII 1862, S. 82.)

Ch. XIX.

S. 225. Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Illustrations.

(*a*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar, Baksh. The Court may infer from these facts that A was not misled and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

(S. 443.)

Unless otherwise specially provided for no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII (on submission for confirmation) or on appeal or revision on account of any error, omission or irregularity in the charge unless such error, omission or irregularity has occasioned a failure of justice. S. 537.

In Baban Khan Valad Mhaskoji, I. L. R., 2 Bomb., 142 the conviction and sentence were set aside on the ground that the charge did not give to the accused the information which the law intended him to have of the particular offence, expressed circumstantially, to which he

was called upon to answer. The High Court remarked:—The description of crimes in the Penal Code must of necessity be expressed in abstract terms, but the very object of a trial is to determine whether particular acts or omissions on the part of an accused fall or do not fall within the rule thus abstractedly stated. Conformably to the principle all the models of charges given in Sch. V of the Code of Criminal Procedure contain or imply the setting forth with reasonable particularity of the matters alleged to constitute the offence.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

(S. 446.)

When the accused was charged under S. 217, Penal Code, without any statement of the direction of law which he disobeyed and how he disobeyed it, it was held that the charge being thus expressed in such vague terms, the prosecution, on the appeal against the conviction, should be limited to the particular sense in which the charge had been understood at the trial. Baban Khan Valad Mhaskoji, I. L. R., 2 Bomb. 142.

Court may alter charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

(Ss. 444, 445.)

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

(S. 447.)

The object of the law is to secure to a prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him so as to enable him to prepare his defence. Consequently a Sessions Judge is not competent to add a charge regarding which no evidence was taken by the Magistrate. He should have adjourned the trial and directed further inquiry. Kovilaghatha Rama Varma Raja, I. L. R., 3 Mad., 351.

The fact that the accused defended by a competent pleader when the charge was altered during the trial, never asked for a new trial, goes to show that he was not prejudiced by the proceedings subsequently taken. It is only in the case of charges closely related that a trial goes on forthwith after an amendment of the charge by the addition of a charge of another offence. Thus, where the prisoner was charged with murder, the addition of a charge of abetment of murder, though it had the effect of making the statement of another prisoner also being tried in the same trial admissible against him, was held to be no ground for holding that the trial should have been adjourned, or a fresh trial held. Govind Babli Raul, 11 Bomb., 278.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(S. 448.)

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

(S. 450.)

The cases regarding which previous sanction to prosecute is necessary are specified in Ss. 132, 195, 197.

S. 230 declares that such a case shall not be proceeded with until such sanction is obtained unless &c. &c., but S. 537 provides that no finding, sentence or order shall be reversed or altered under Chapter XXVII (in a case submitted for confirmation of sentence) or on appeal or revision on account of the want of any sanction required by S. 195 unless such want has occasioned a failure of justice. S. 537 does not however apply to cases requiring sanction under other sections than S. 195, *e. g.* under S. 132, S. 196, or S. 197.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the ac-

cused shall be allowed to re-call or re-summon, and examine with reference to such alteration, any witness who may have been examined.

(S. 449.)

Effect of material errors.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

(S. 451.)

No finding or sentence shall be invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby. If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order the charge to be framed, and that the trial be recommenced from the point immediately after the framing of the charge. S. 535.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

(S. 452.)

Thus, two persons tried for intentionally giving false evidence (S. 193, Penal Code) in the same trial, must be separately charged and separately tried. Mad. H. Ct, March 15, 1867; Weir, 268; 10 W. R., 2 Cal. Chand Khan, 2 Leg. Rem., 183.

Three offences of same kind within year may be charged together.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

(S. 453.)

The offences must be committed against the same person to be joined in one trial under S 234. Thus, where M was accused of cheating G on two occasions and K on a third, it was held that although the three offences were of the same kind and were all committed within the space of twelve months they should not have been joined in the same trial. Murari, I. L. R., 4 All., 147.

When certain persons had been tried in one case and convicted of various offences committed between 1872 and 1876, it was held that the trial was irregular, and therefore the hearing of appeals against the conviction and acquittal of such offences would also be irregular. The High Court consequently restricted the appeal in respect of offences committed in 1874-5 only, having regard to S. 234, as it appeared that this course did not prejudice the accused persons who had been fairly tried for those offences. Harmanta Madhaji Khadke and others, Bomb. H. Ct, Feb. 26, 1877.

S. 234 does not mean that if, at one time, or within one year or more a man commits fifty distinct offences of the same kind, he shall not in one day be prosecuted for more than three such offences. This is clear from S. 235 (*d*). It only restricts the number of offences charged in one trial. In the matter of Ram Manickyo Chuckerbutty, 1 Cal. L. R., 478.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

II.—Offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

III.—Acts constituting one offence, but constituting when combined a different offence.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations.

to paragraph I—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable, in whose custody B was. A may be charged with, and tried for, offences under Ss. 225 and 333 of the Indian Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under Ss. 498 and 497 of the Indian Penal Code.

(*d*) A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under S. 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under S. 473 of the Indian Penal Code.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under S. 211 of the Indian Penal Code.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under S. 211 and 194 of the Indian Penal Code.

(*g*) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under Ss. 147, 325 and 152 of the Indian Penal Code.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under S. 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under Ss. 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under Ss. 411 and 414 of the Indian Penal Code.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under Ss. 317 and 304 of the Indian Penal Code.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under S. 167 of the Indian Penal Code. A may be charged separately with, and convicted of, offences under Ss. 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under Ss. 323, 392 and 393 of the Indian Penal Code.

(S. 454.)

S 71, Penal Code, should be read with this section:—

When anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences unless it be so expressly provided.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

The judgment of the Madras H. Ct. in the case of Noujan, 7 Mad. 375; (S. C.) Weir, 271; is very instructive and may well be consulted with respect to S. 235 though it proceeds on an Illustration to S. 454 of the Code of 1872 which has not been reproduced. It was there held that a person cannot be punished for abducting a child with intent dishonestly to take moveable property, and also for the theft of a part of the moveable property which he intended dishonestly to take by means of the abduction.

The Allahabad High Court (Mungroo and another, 8 All., 293) similarly set aside a conviction and sentence under S. 346, Penal Code, (wrongful confinement in secret) holding that the prisoner could not also be convicted of attempt to kidnap out of British India (Ss. 511, 363), since the latter offence necessarily implies confinement or restraint of some kind.

As a general rule, when in the same penal statute there are two clauses applicable to the same act of an accused, the punishments are not to be considered as cumulative, unless it be so expressly provided. So separate convictions and sentences under S. 435 and S. 436, Penal Code, were disapproved, the sentence under S. 435 being set aside.—Bom. H. Ct, Dodbasaya, Feb. 12, 1874. S. 235, para. 2 has omitted the concluding words of S. 454, para. 2 which it professes to re-enact, *viz.*, "but he must not receive a more severe punishment than could be awarded by the Court which tries him, for either."

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(S. 455.)

S. 72, Penal Code, declares that in all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

The distinction between section 236 and the first para. of S. 235 should be noted. In the former it is the application of the law to

the facts that is doubtful, whereas S. 235, para. 1, refers to the commission of a series of acts, each of which taken separately constitutes a distinct offence.

[When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, of receiving stolen goods (as the case may be), though he was not charged with such offence.

(S. 456.)

On a trial for abetment and attempt to commit criminal breach of trust, it was held that the prisoner might and should have been convicted of attempt to cheat and abetment of that offence. The High Court remarked that the legal character of the acts done by the accused might well be considered ambiguous, but the evidence given would apply to the one offence as to the other. The prisoners had been acquitted by the Sessions Judge, though he found facts sufficient to convict them of attempt and abetment of cheating, and a new trial was ordered by the High Court on the appeal of Government.—Government of Bombay, 12 Bomb., 1.

When offence proved included in offence charged.

***238.** When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remain- particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under S. 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under S. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under S. 406.

(*b*) A is charged under S. 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under S. 335 of that Code.

(S. 457.)

This section applies to cases in which the charge is of an offence which consists of several particulars, a combination of only some of which constitutes a complete minor offence. The grave charge in such a case gives to the accused notice of all the circumstances going to constitute the minor one of which he may be convicted. The latter is arrived at by mere substraction from the former. Bnt this is not the case where the circumstances embodied in the major charge do not necessarily, and according to the definition of the offence imputed by that charge, constitute that minor offence also; the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter. The section was not intended to apply to a collateral offence. It is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself.—Chand Nur and another, 11 Bomb., 240.

S. 238 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. Thus when the prisoners were charged with being members of an unlawful assembly in prosecution of the common object of which grievous hurt was committed by some member, it was held that they could be convicted of voluntarily causing grievous hurt. Mahuddi, 6 Cal. L. R., 349.

So where the prisoner was charged with culpable homicide (S. 304) and voluntarily causing grievous hurt without grave or sudden provocation (S. 325), he was convicted under S. 335 of having caused that hurt on grave and sudden provocation. Lukhinarain Agoori, 23 W. R., 61.

The offence of criminal house-trespass, S. 445, Penal Code, is not part of the offence of dacoity, or of riot, and, therefore, without a specific charge, a person under trial for dacoity and riot cannot be convicted of criminal house-trespass.—Salamat Ali, 23 W R., 59. But the retaining stolen property acquired by dacoity, S. 412, Penal Code, is included in the more comprehensive charge of dacoity.—Lakhya Govind, I. L. R., 1 Bomb., 50.

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged

and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

(S. 458.)

If two or more persons are jointly charged with an offence and the jurisdiction of the Magistrate is ousted as to one, the Magistrate should hold an inquiry and either discharge or commit all for trial by the Sessions Court. Mad, H. Ct. Pro. March 18, 1868; Weir, 135.

When several persons are charged with offences of various degrees arising out of one act or transaction, all implicated therein, against whom sufficient evidence is forthcoming, should be committed to the Court of Session, if *any* of the accused is charged with an offence beyond the cognizance of a Magistrate, or one which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session.—Agra Sudder Court Cir. 64, 1862; Cal. H. Ct. Cir., May 19, 1862.

A person purchasing stolen articles from a thief or receiver of stolen property cannot be said to be engaged in the same transaction with another who purchases a different article. There is no privity whatever between the two and they should therefore be tried separately. Manik, 1 Leg. Rem., 216.

Persons charged with having, as witnesses, intentionally given false evidence on the same trial or proceedings should be charged and tried separately. 10 W. R., 2 Cal.; Mad. H. Ct., March 15, 1867; Weir, 268; Chand Khan, 2 Leg. Rem., 183. So should the persons composing the contending parties in a riot. Durzoola Khan, 9 W. R., 83; Hosein Buksh Sheikh, 6 Cal. L. R., 521.

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such

charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

(S. 459.)

S. 240 it should be noted is general and not like the corresponding section, 459, of the Code of 1872, restricted in its application to trials before a High Court or Court of Session.

Chapter XXXVIII relates to Public Prosecutors, S. 495 of which empowers a Magistrate to permit any person other than an officer of Police below the rank of Police Inspector to conduct a prosecution. S. 494 further provides that a Public Prosecutor with consent of the Court may withdraw from a prosecution in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

(S. 203, para. 1.)

A summons-case means a case regarding an offence not punishable with death, transportation or imprisonment for a term exceeding six months, S. 4 (*t*) that is, an offence punishable with imprisonment for a term not exceeding six months or with fine or with whipping or any of these punishments combined.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

(Ss. 203, para. 2; S. 206, para. 1.)

When a Magistrate issues a summons, he may if he sees reason to do so, dispense with the personal attendance of the accused and permit him to appear by pleader, but he may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and if necessary enforce his attendance. S. 205.

It is necessary that the accused should have a clear statement made to him (1) that he is about to be put on his trial and (2) as to the offence or facts constituting the offence with the commission of which he is accused. Where certain persons had been brought before the Magistrate for other purposes while he was in camp, and these circumstances were not made known to them, they were released as having been improperly convicted. In the matter of Acharjee Lall and another, 3 Cal. L. R., 87.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

(S. 206, para. 2.)

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

(Ss. 207, 361.)

In summons-cases tried before a Magistrate other than a Presidency Magistrate, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. Such memorandum shall be written and signed by the Magistrate with his own hand and shall form part of the record. If such Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record. S. 355. But if the Magistrate thinks fit, he may take down the evidence of any witness as in a warrant case. S. 355.

S. 362 provides for the record of evidence in Presidency Magistrates' Courts.

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

(S. 211, paras. 1, 2.)

See Chapter XXVI, Ss. 366—372 for the rules regarding the delivery and recording of judgments.

Magistrates of the second and third classes should submit to the Magistrate of the District a calendar of every case in which conviction takes place, within 24 hours from the sentence being passed, in order to enable a District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—Bomb. H. Ct. Cir., 43.

Whenever any officer, enlisted soldier or sepoy is sentenced in any Criminal Court to fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted —Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal Cir. 58, Oct. 30, 1871; Smyth, p. 148.

Whenever any person serving under Government in the Military Department is convicted in a Criminal Court, information should be given to the Officer Commanding the Regiment or Corps to which he belongs; and if the person convicted be serving under the Government of India in the Military Department, a copy of the conviction and sentence should be provided to that Department.—Cal. H. Ct. Cir. 6, July 17, 1871.

Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the head of the department in which he is employed, in order that such action as may be deemed proper may be taken at once.—Govt. of India, Aug. 7, 1868; Govt. of Bengal, 4589, Aug. 22, 1868.

Ordinarily cases tried under this Chapter are non-cognizable cases; complaints or charges of cases of that class are liable to stamp-duty of eight annas under the Court Fees' Act (VII, 1870), Sch. II, Art. 8, (*b*); or if no written but a verbal complaint has been preferred, the complainant is required to pay a fee of eight annas on his examination (S. 18). Magistrates, on convicting persons accused of such offences should bear in mind that, under S. 31 of the same Act, they are bound, in addition to the penalty imposed upon an accused, to order him to repay to the complainant the fee paid on such application or petition or for such examination as well as any fees for serving processes—Such fees "may be recovered as if they were fines imposed by the Court," *i. e.*, under S. 387 of this Code.

If sentence of imprisonment is passed the warrant of commitment to Jail should be in the form prescribed by Sch. V, No. 29.

Ss 246, 247. **Finding not limited by complaint or summons**

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

(S. 203, para. 2.)

Non-appearance of complainant.

247. If the summons have been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

(Ss. 205, 208, para. 3; S. 212.)

The discretion given by this section to dismiss a complaint on non-appearance of the complainant is not applicable to a case falling under S. 195, that is, a case requiring special sanction for its institution. Where therefore sanction had been given by a Court to prosecute a person for resisting the authority of one of the bailiffs of that Court, the non-appearance of the bailiff does not justify a Magistrate in dismissing the complaint.—Bomb. H. Ct. Empress *v.* Ramchunder Sidheshwar, Oct. 21, 1878. See also Muse Ali Adam, I. L. R., 2 Bomb., 653.

Where the order for adjournment was not made in the presence and the hearing of the parties, and the case was subsequently dismissed on account of the absence of the complainant, the proceedings were set aside as illegal.—Mad. H. Ct. Pro., Feb. 24, 1875; 8 Mad., 6, *App.*

An adjournment is within the discretion of the Magistrate. In the case of Bhekka Roy (10 W R., 36), the Calcutta High Court would not interfere, because the Magistrate had refused to grant an adjournment for the purpose of summoning the witnesses for the defence; and in the case of Dinoo Roy (16 W. R., 21), the same Court held that an adjournment for this purpose was not wrong in law. But the Magistrate should not dismiss a case on the day fixed for the attendance of the witnesses for the defence merely because the complainant did not appear, unless his attendance has been specially required at that adjourned date, for he has done all that is necessary for him to do to establish his case. Mad. H. Ct. Pro. Nov. 5, 1874, Weir, 184.

An adjournment of the trial may be granted by an order in writing stating the reasons therefor, on account of the absence of a witness or any other reasonable cause, on such terms as the Magistrate may think fit and for such time as he may consider reasonable, provided that it is not for a term exceeding fifteen days. S. 344.

Where a case was dismissed in consequence of the non-appearance of the complainant, and it appeared that he had not been informed of the day fixed for the trial, it was held that a grave irregularity had been committed such as to make the proceedings held amount to no trial, and that therefore there was no acquittal of the accused. Mad. H. Ct. Pro. Aug. 17, 1875, Weir, 189.

Withdrawal of complaint

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

(S. 210.)

S. 345 provides for the compounding of certain offences, under Ss. 341, 352, 436, 447, 490, 491, 492, Penal Code, some of which are summons-cases, without permission of the Court, and abetments of, or attempts to, commit such offences may be similarly dealt with.

Where a prosecution can be instituted only with the sanction of a particular officer or Court, it cannot be withdrawn without such sanction. *In re* Muse Ali Adam, I. L. R., 2 Bomb., 653.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

(new.)

Frivolous or vexatious complaints.

250. If, in any case instituted upon complaint, a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Recovery of compensation.

The sum so awarded shall be recoverable as if it were a fine: Provided that, if it cannot be realized, the imprison-

Ch XX.

S 250.

ment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under the section.

(S. 209, paras. 1 and 2.)

S. 545 enables a Court to apply the whole or any part of a fine which was been rendered to the payment of the expenses of a complainant or as compensation for the injury sustained.

In BENGAL and in ASSAM on an application for the recovery of compensation under S. 250 a fee of eight annas is charged for the warrant for its levy. *Bengal Gaz.* 1879, p. 304: *Assam Gaz.* 1879, p. 596. Wilkins, 82.

When a Magistrate allows a complaint to be withdrawn he cannot allow compensation to the accused. Amanut Khan *v.* Khoda Buksh, 1 Leg. Rem., 148.

There is a wide difference between the procedure necessary, when a person is charged with an offence under S. 211, Penal Code (making a false charge with intent to injure, &c.), and that laid down in S 250, Code of Criminal Procedure. Under the latter by the order of dismissal, if his complaint be frivolous and vexatious, the complainant might be ordered to pay to the person against whom the charge was brought, such amends, not exceeding 50 rupees, as the Magistrate might consider just and reasonable; but in order to make him liable to the penalty provided by S. 211, Penal Code, for a false complaint, it would be necessary to hold a regular trial.—Cal. H. Ct. Cir. 19, July 22, 1863, adopted by the Agra Sud. Ct., 23, 1863 and by the Judicial Commissioner, Cen. Prov., 37, 1863.

It is not necessary that any charge should be preferred before a person can be fined for making a frivolous or vexatious complaint. The Magistrate should simply call upon the complainant to show cause why he should not be fined.—Cal. H. Ct., 672, 1863. *Contra* Muthoor Ghose, 11 W. R., 10.

Compensation can be awarded only in summons cases. When the complaint made was house-trespass with intent to rob and murder, compensation cannot be awarded, although the Magistrate may treat the case as an ordinary case of house-trespass and try it as a summons case.—Gurningapa, 7 Bomb., 48, *Crown Cases.*

But the Calcutta High Court has held that where the complaint was made of various offences, some triable as warrant cases and others as summons cases, the Magistrate can in the latter award compensation.—Muddoosoodun Ghose, 13 W. R, 39.

As opposed to the rule laid down by the Calcutta High Court in the case of Muddoosoodun Ghose, 13 W. R., 39, see Hurree Dutta 18 W. R., 6, in which it was held that when the complaint was of criminal force and theft or robbery, compensation could not be awarded, because the case was not altogether a summons case But when the complaint was improperly made as one of theft, whereas the

offence really committed was mischief or using criminal force, both summons cases, a Magistrate is not prevented from awarding compensation. Cal. H. Ct. Lalla Baneshwar Sahai, Aug. 20, 1877.

Simultaneously with awarding compensation, the Magistrate may give permission to the accused person to institute a prosecution on a charge of intentionally giving false evidence or instituting a false case with intent to injure.—Rupon Rai, 6 B. L. R., 296. The award is no ground for the abandonment of such a prosecution; but, if the Magistrate thinks that by the fine imposed sufficient punishment has been imposed, he can refuse to give leave to prosecute.—Cal. H. Ct. 111, 1863. Nor does an award of compensation deprive the accused of any right of suit for damages in the Civil Court.—Adram, 1 N. W. P., 58, but in such a suit the Court shall take into account any sum paid or recovered as compensation. S. 250, last para.

Where a master made a complaint on behalf of his servant which was dismissed as frivolous and vexatious, it was held that compensation could not be awarded as the complainant had no *locus standi* and the complaint should have been dismissed without investigation. Corbyn, Panj. Rec. 1869, p. 51.

A karkun on the establishment of a Sub-Judge reported that he had been obstructed in the execution of his duty, whereupon the Sub-Judge instituted criminal proceedings before the Magistrate, who found that no obstruction to the attachment had been offered by the accused, and accordingly acquitted him, directing the karkun to pay Rs 5 as compensation under S. 250. The High Court set aside this order of compensation as illegal, remarking that the Sub-Judge, and not the karkun, must be regarded as the complainant, that the Sub-Judge would not be liable to this penalty as he acted judicially, and that the karkun might be punished for making a false report, or giving false evidence, but he was not liable under S. 250, because he was not the complainant.—*In re* Keshav Lakhsman, I. L. R, 1 Bomb. 175.

The jurisdiction to award compensation is limited to cases in which the accused is not called upon to make a defence. The complaint is then dismissed, and if it appears frivolous and vexatious, the Magistrate can award compensation. But when the evidence for the complainant is such that the case requires an answer, and evidence is thereupon given on the part of the defendant, then, even though the accused is acquitted, the jurisdiction of the Magistrate to award compensation is ousted. It is very obvious that the complaint cannot have been frivolous or vexatious since the Magistrate has seen fit after hearing the complainant's case, to require the accused to answer it. Mad. H. Ct. Pro. Nov. 22, 1879; Weir, 13 *Sup.*

An order under S. 250 awarding compensation cannot be passed by an Appellate Court, which revises the sentence passed.—8 Mad. 7, *App.*; Pro. Feb. 27, 1875, Weir, 186.

The simultaneous issue and currency of warrants of distress and imprisonment in the Civil Jail as the alternative of non-realisation of the fine, are illegal. It is only when the person fined admits that he has no goods and thereby waives the right to have the amount levied by distress, that the Magistrate may at once proceed to imprison him in the Civil Jail.—Bisheshwar Shaha, 23 W. R., 65.

Compensation cannot be awarded as a fine, in default of payment

Ch. XXI. — Ss. 251, 252.

of which, imprisonment will be undergone. That follows on default of realization of the fine by distress —Gopal, 2 All., 430; Prabhoo Dyal, Panj. Rec., 1869, p. 58. But imprisonment cannot be awarded in anticipation of default of distress.—Mad. H. Ct. Pro., Dec. 28, 1871; 7 Mad. Jur., 137.

S. 388 enables a Court to suspend execution of a sentence of imprisonment in default of payment of a fine, when the sentence is of fine only. (Ss. 386, 387 provide for the levy of a fine.)

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

(S. 213.)

Warrant-case means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months. S. 4 (*s*).

Evidence for prosecution.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

(Ss. 190, 362.)

Ss. 356 *et seq.* provide for the manner in which evidence of witnesses in warrant cases shall be recorded.

See note to S. 208 for the rules prescribed by the Calcutta High Court for the duty of the Court in recording evidence.

Where an accused is brought before a Magistrate, that officer has no authority further to detain him in custody or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him or in some other form which can be put on the record, and which is sufficient to justify him in sending the accused to prison.—Abdool Kadir, 11 B. L. R., 8, *App.*

Whenever a Magistrate issues a summons he may, if he sees fit to do so, dispense with the personal attendance of the accused and permit him to appear by pleader, but he can at any stage of the proceedings direct the personal attendance of the accused, and if necessary, enforce his attendance. S. 203.

If the personal attendance of the accused person be dispensed with, he should be represented by an agent, who should be provided with a mukhtarnama bearing a stamp of eight annas.

Discharge of accused.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(S. 215.)

An illegal arrest by the Police, without a warrant issued, on complaint for non-cognizable offence is no valid ground for an order of discharge by a Magistrate. He cannot pass an order of discharge until he has heard the evidence against the accused.—Bomb. H. Ct., Sangapa Sankrapa, May 21, 1873.

"All the evidence required to in S. 252", that is, "all such evidence as may be produced in support of the prosecution" and "such witnesses as the Magistrate may think necessary to summon" but this is modified by the last para. of S. 253 which is new. The Calcutta High Court has in numerous cases held that where a Magistrate terminates a trial without examining all the witnesses tendered by the prosecution he cannot direct the complainant to be prosecuted for making a false complaint under S. 211, Penal Code. In the matter of Ganjoo Singh and others, 2 Cal. L. R., 389. But under S. 215 Explanation III of the Code of 1872 then in force an order of discharge could not be passed until the evidence of the witnesses for the prosecution had been taken. This is now within the discretion of a Magistrate. S. 476, however, states that before directing such a prosecution, the Court should make any preliminary inquiry that may be necessary, and if a Magistrate under the last para. of S. 253 summarily discharges an accused, it will probably be necessary that before directing the complainant to be prosecuted, he should in a preliminary inquiry examine whatever witnesses may be tendered on behalf of that person.

There is no restriction put by this section on the power to examine the accused. In the corresponding section (S. 209) relating to inquiries, it is stated that where the evidence has been taken and the Magistrate

Ch. XXI. — S. 254.

has "examined the accused for the purpose of enabling him to explain any circumstances appearing in evidence against him" &c., S. 289 relating to Sessions trials is like S. 253 general in its terms regarding the examination of the accused. But see S. 342 which requires a Court, for the purpose of enabling an accused to explain any circumstances appearing in the evidence against him, to question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

Under the Code of 1872 it was held that after an order of discharge passed by a Magistrate in any case except a Sessions case, that is, a case triable exclusively by a Court of Session, no Magistrate could re-open the proceedings and commence a new trial unless evidence be forthcoming which was not before the Magistrate in the first proceedings. See Mohesh Mistree, I. L R., Cal., 282; Mary Donelly, I. L. R., 2 Cal., 405; Gowdapa bin Venkugowda, I. L. R, 2 Bomb., 534 &c., &c. But S. 437 of this Code has altered the law by enabling a High Court, Sessions Court, or District Magistrate to direct further inquiry to be made into the case of any accused person who has been discharged.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(S. 216.)

Sch. V, No. 28 contains various forms of charges.

It is unnecessary for a Magistrate to examine more witnesses than are sufficient to convince him of the truth of the charge, and in that view he is competent under S. 342 to put questions to the accused. The answers given to these questions, if any are given, will generally have as great effect as to the witnesses necessary to be examined on the part of the prosecution; and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the Magistrate should not then frame the charge and call upon the accused to plead.—Mad H. Ct., Sept. 12, 1864; Dec 18, 1864.

In framing a charge a Magistrate is not restricted to the offences stated in the complaint. If on the evidence he should find that an offence different from that which had been specially charged in the complaint has been committed, he is competent to inquire into and proceed against the accused with regard to the other offence.—Dhondu Ramchandra, 5 Bomb., 100, *Crown Cases.*

The examination of an accused is by S. 342 declared to be for the purpose of enabling him to explain any circumstances appearing on the evidence against him, and a Magistrate is accordingly empowered at any stage of the trial without previously warning him to put him such

questions as he may consider necessary, and also for the same purpose question him generally on the case after the witnesses for the prosecution have been examined and before he is called upon for his defence.

Plea

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

(S. 217.)

No inference can be drawn from a plea, if it does not amount to a distinct confession of the charge; the charge must be proved.—Mad H. Ct. Pro., Dec. 14, 1871; 7 Mad. Jur., 136.

Defence.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

(S. 218.)

The examination of an accused person which may have been made before the preparation of a charge, will not dispense with the necessity for putting him on his defence after the charge has been prepared.—Golab Roy, 3 Agra, 156.

A Magistrate held that, by simply pleading not guilty, the accused had made no defence such as to entitle him to recall and cross-examine the witnesses for the prosecution; but this order was set aside by the High Court, who held that the accused was entitled to prove that he was not guilty by cross-examining the witnesses.—Belilios, 19 W. R., 53.

The terms of S. 256 remove many of the difficulties experienced from the corresponding section (218) of the Code of 1872. The accused "shall, *at any time while he is making his defence* be allowed to recall and cross-examine the witnesses for the prosecution *present in the Court or its precincts;*" the words in italics are new. The accused has of course the right to cross-examine the witnesses for the prosecution after they have been examined in chief, that is, examined by the party who called them, the cross-examination relating to relevant facts, (S. 138, Evidence Act), and the exercise of this right will not prevent his asking to have the witnesses recalled and cross-examined after he has been called upon to enter upon his defence provided that such witnesses

Ch. XXI. — S. 256.

are present in the Court or its precincts.—A Magistrate has the discretion under certain circumstances (see S. 257) to refuse to require the re-attendance of witnesses for the prosecution for purposes of cross-examination or he may first require the deposit of their reasonable expenses so that the accused can no longer insist on the witnesses being re-summoned. This alteration in the law will no doubt if judiciously carried out prevent the abuses felt under the former law.

The object of the section is to secure to the accused the opportunity of cross-examining the witnesses for the prosecution after he has been informed as to the nature of the specific charge which he is required to answer. Until he knows this, he is not in a position to decide on what points the evidence for the prosecution is material. If this opportunity be secured, he has no further right of recalling the witnesses for the prosecution. If he refuses to exercise this right, after he has entered on his defence, he cannot demand as a right to recall the witnesses for the prosecution, if the case be adjourned, because he has not produced his witnesses. What his own witnesses may have to say, can have little or no bearing on the cross-examination of the witnesses for the prosecution who are called to support the charge but not to refute the evidence for the defence. Baldeo Sahai, I. L. R., 2 All., 253.

When, as frequently happens, it becomes necessary to summon witnesses for the defence from a distance, and consequently to adjourn the hearing for some days, the necessity of retaining in attendance the witnesses for the prosecution must occasion considerable inconvenience to the witnesses and expense to the public. Therefore, the Magistrate should in all cases before granting an adjournment inquire of the accused if he desires to exercise his rights of recalling the witnesses for the prosecution or consents to the discharge of any or all of them. If the accused consents to their discharge, and they are discharged accordingly, he is not entitled to have them re-summoned as a matter of right, but it would be in the discretion of the Magistrate to re-summon them. Whether, if the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, the Magistrate would thereupon be at liberty to discharge the witnesses, for the prosecution need not now be determined. In the present instance the Magistrate did not call upon the accused to exercise his rights and there is no sufficient proof that the accused consented to the discharge of the witnesses, he was probably not aware that he had any option in the matter, and therefore it would be an unsound inference from his silence that he consented to it. The accused was entitled to have the witnesses whom he desired to cross-examine re-summoned.—Lall Mahomed, 6 All., 284.

An accused person in a warrant case has an undoubted right to have the witnesses for the prosecution recalled for the purpose of cross-examination after the charge has been framed against him, unless he has waived that right; he may no doubt either waive it by express words, or he may waive it by allowing the proper time in the course of the trial to go by without availing himself of that right. As a rule the proper and convenient time in the course of the trial is at the commencement of the defence of the accused person. But the law does not lay down any rigid rule on the subject, and unless the accused person has waived

the right, he is entitled to recall and cross-examine the witnesses for the prosecution even after he has called and examined the witnesses for his defence. If a trial is likely to continue over many days or a lengthened period, it may be great harassment and vexation to the witnesses that they should all be compelled to remain at the place of trial until its termination, and it is right and proper that the Court should permit them to go home as soon as their attendance at Court has become unnecessary. But it is incumbent on the Court before it discharges a witness from the duty of attendance before the trial is ended, to ascertain from the accused person whether he has, or is likely to have, any need of the witness's testimony, and if he has such need then to take such steps for insuring the presence of the witness at the required time as may be necessary. If a Magistrate before discharging a witness obtains the assent of the accused person to his going away without any order for his re-appearance, then no doubt such assent would be the best possible evidence of waiver of the accused person's right to cross-examine. Nothing having been shown to have been done or omitted to be done on the part of the accused, which could possibly be construed into a waiver of his right to cross-examine the witnesses for the prosecution, though that right was not claimed until the witnesses for the defence had been examined, the Calcutta High Court held that the Magistrate was not competent to refuse to recall them, and setting aside the conviction ordered the trial to be re-opened at this point.—Khurruckdharee Singh, 22 W. R., 44. See also Ram Kishen Halwai, 25 W. R., 48.

In the case of Thakoor Dyal Sen, 17 W. R, 57 the following judgment was delivered by COUCH, C. J., (AINSLIE, J., concurring.)

"It does not clearly appear whether it was intended by the Code that there should be, previous to the preparation of the charge, a full cross-examination by the accused or by his pleader; it would rather seem, that that was not contemplated, and that the Magistrate should, in the first instance, examine the witnesses with a view to seeing whether there was a *primâ facie* case against the accused person, and then that he should prepare the charge.

"Now I do not say that if an accused person or his pleader went into a full cross-examination before the preparation of the charge, and were told that if he did that, he might be waiving his right to a further cross-examination after the charge had been prepared, that he would not be precluded from the subsequent cross-examination. It is possible that if put to it, he might be obliged to elect between the two, and not to have the inconvenient proceeding of the whole of the cross-examination being again repeated.

"But here that does not seem to have been done. The Magistrate appears to have allowed a cross-examination before the charge was prepared; but when the accused was put upon his defence, it might be very important that some further question should be put to the witnesses for the prosecution in order to elicit facts which might constitute a defence for him. I think that the Magistrate had no power to say that this should not be done, and that the cross-examination, which had been already had, should be the only cross-examination in the case. If the privilege of cross-examination had been abused and questions which had been put before and appeared to have been answered (the witnesses

understanding the questions), were repeated, the Magistrate might have stopped that and confined the cross-examination to its proper limits. I think it was not competent to him to refuse to allow the witnesses to be recalled and cross-examined after the accused had been upon his defence.

"Also, the subsequent section would entitle the accused person to call the witnesses as his own. Of course, he would be in a different position then, and would not be allowed to cross-examine them and treat them as witnesses for the prosecution. What he really required, and what he was entitled to, was to have them recalled and to cross-examine them, treating them as witnesses for the prosecution."—Thakoor Dyal Sen, 17 W. R., 57.

Process for compelling production of evidence at instance of accused.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

(S. 262, para. 2.)

By the terms of this section an accused by summoning a witness for the prosecution for the purpose of cross-examination would not make him his witness. The prosecution will of course be entitled to re-examine such a witness. Evidence Act (I of 1872), S. 138.

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. Evidence Act (I of 1872), S. 139.

When a Magistrate refused to summon witnesses cited by an accused person without assigning any reasons, and convicted him, the conviction was set aside and he was ordered to proceed according to law. *In re* Satnarain Singh, I. L. R., 3 All., 392. A Magistrate is not at liberty to refuse such an application except for the reasons specified in the law. *In re* Deela Mahtoon, 8 Cal. L. R., 72.

Acquittal.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

(S. 220.)

If, however, before signing judgment it appears to a Magistrate at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court and he is empowered to commit, he shall stay further proceedings and commit the accused. If he is not empowered to commit, the Magistrate will submit the case with a brief report explaining its nature to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction as the District Magistrate directs. Ss. 347, 346.

Chapter XXVI, Ss. 366—372 provide for the recording and delivery of judgments of acquittal or conviction. Where a complete trial had been held except that no formal charge had been drawn and the prisoner had been acquitted, it was held that the mere absence of a formal charge would not prevent the order from operating as an acquittal unless it be shown that the absence of a charge has been in itself the cause of a failure of justice (see S. 537). In the matter of Joga Pershad, 3 Cal. L. R, 131.

Sch. V. No. 28 gives the form of warrant for commitment on a sentence of imprisonment or fine.

If the accused is convicted of an offence which is a non-cognizable offence, the Court shall in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on his application or petition *viz.*, eight annas—(S. 18, Court Fees' Act, VII of 1870) or the same amount paid on his examination (S. 18) and, when he has paid fees for serving processes, also the amount paid therefor: all such fees to be recovered as if they were fines imposed by the Court—Court Fees' Act, VII 1870, S. 31.

Absence of complainant.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

(S. 215.)

S. 345 declares that certain offences may be compounded by certain persons without and with the permission of the Court before which the prosecution of such offence is pending. Sch. II, Col. 6 also specifies the offences which are compoundable.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code.

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code;

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(Ss. 222, 223, 224.)

In the N. W. Provinces, all Magistrates of the first class who are or who have officiated as Joint Magistrates, and also all Assistant Commissioners who are or who have officiated in the first class, have been invested with powers to act under S. 260.—Govt. Not., Dec. 24, 1873.

In Madras, every Magistrate of a Division of a District exercising powers of a Magistrate of the first class has been vested with the power of holding summary trials under S. 260.—*Mad. Gaz.*, 1874, p. 1136.

To the list contained in S. 222 of the Code of 1872 the offence specified in (*f*) has been added and both to it as well as to (*e*) receiving or retaining stolen property a limitation has been placed on the jurisdiction to hold a summary trial only where the value of the property does not exceed fifty Rupees as in case of theft.

If any Magistrate, not being empowered by law on that behalf, tries an offender summarily, his proceedings shall be void. S. 530 (*q*).

Ss. 15, 16 relate to the powers and constitution of Benches of Magistrates and for the making of rules for their business.

It should be noted that S. 262 declares that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction in a summary trial, and as S. 414 provides that there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under S. 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred Rupees only, or of whipping only, an appeal would lie against a sentence passed in a summary trial held under S. 260 only where the sentence passed is a combination of any two or more punishments.

If, however, the trial be held by a Bench of Magistrates under S. 261, an appeal would lie to the District Magistrate against any sentence passed. S. 407.

The restriction placed in the Magistrates' powers in summary trials by S. 262 will no doubt to a great extent remove the temptation to adopt this easier mode of trial rather than the procedure and the additional labour of recording evidence as in warrant cases. It is not unusual to find that in a case in which the offence really committed is one that cannot be tried summarily, a summary trial is held for a minor offence which forms one of the component parts of the offence actually committed and this minor offence being one within the list of offences specified in S. 260, the summary trial is apparently legal. This practice has been condemned in many judgments of the High Court.

The case of Chunder Seekor Thakoor, 22 W. R., 29 will serve as an illustration of the practice. The complaint was made of theft of property valued at Rs. 884, and after Police investigation was reported to be house-breaking by night in order to commit theft (S. 457, Penal Code) neither of these offences being triable summarily. The Magistrate, however, summarily tried and convicted the accused of dishonestly receiving stolen property (S. 411) an offence falling within S. 222 of the

Ch. XXI.

S. 260.

Code of 1872. The proceedings were set aside as contrary to law, the following observations being made by the High Court:—

The powers conferred upon Magistrates under Chapter XXII of the Code of Criminal Procedure appear not to have been intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that Chapter, but when a charge of a serious offence, one which the Magistrate is not competent to inquire into summarily, has been regularly preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases and either to convict or acquit or commit for trial the person implicated. The procedure under Chapter XXII is to be followed when a charge brought against the accused is plainly and directly one of those specified in S. 260. Now, supposing that the Magistrate could properly and legally have brought this case within the provisions of Chapter XXII, there were very cogent reasons why he should not have done so. Whether the Legislature intended to bring under this Chapter all cases of receiving stolen property, whether the value of the property stolen did or did not exceed Rs. 50, it is clear where the value is large and where the property has been acquired by so grave a crime as house-breaking, the offence is one which it would be proper to visit with a punishment far exceeding three months' rigorous imprisonment, and in which consequently an appeal would lie to the Court of Session. In such a case therefore the provisions of S. 227 (now S. 263) would manifestly not apply, and it would be necessary to record at least the substance of the evidence. As the case stands there has been absolutely no trial and no investigation into the charge preferred by the Police, *viz.*, a charge under S. 457 of the Indian Penal Code.—*In re* Chunder Seekor Thakoor, 22 W. R., 29; see also *In re* Banee Madhub Dass, 23 W. R., 3, where the Magistrate in a summary trial convicted under S. 352, Penal Code, of using criminal force instead of under S. 353 of using criminal force to a public servant, &c.

A Magistrate cannot split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must deal with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. In this case the accused were tried and convicted summarily of being members of an unlawful assembly (S. 143, Penal Code) whereas the complaint made and the evidence showed that they were armed with swords, and should therefore have been tried under S. 144 which could not be tried summarily. The convictions were set aside and fresh trials were ordered. In the matter of Abdool Kadir and others, 3 Cal. L. R., 44; (S C.) I. L R., 4, Cal., 16. See also Chunder Seekor Sookul, 1 Cal. L. R., 434: Beputoolla, 2 Cal. L R., 374: Dwarkanath Majoomdar, 2 W. R., 89: Ram Chunder Chatterjee, 25 W. R., 19: Bugleh Ali, 22 W. R., 65, &c., &c.

The judgment of the Calcutta High Court in the case of Issur Chunder Mundul and others, 25 W. R., 65 is also deserving of careful attention.

"In this case certain persons have been convicted under S. 426 of the Indian Penal Code of the offence of mischief, and sentenced to a fine of Rs. 20, or fifteen days' rigorous imprisonment for each. The mischief charged was the causing cattle to trespass and graze on the prosecutor's land.

"The proceeding was nominally by way of summary trial. Practically, it was a very hotly contested suit, in which the masters of the prosecutor and of the accused respectively asserted and tried to prove their right to the land on which the cattle were alleged to have trespassed.

"S. 227 (of the Code of 1872, now re-enacted in S. 263 of this Code) enacts that in summary trials the Magistrate need not record the evidence of the witnesses, nor the reasons for passing the judgment, but that he shall enter in a register, to be kept for the purpose, the prisoner's plea, the finding, and, in the case of a conviction, a brief statement of the reasons therefor.

"How little this case really partook of the nature of a summary trial may be judged of from the time spent over it. Many days (the 13th, 14th, 15th, 16th, 17th, 19th, and 20th of June) were occupied in the examination of witnesses, and a long written judgment was delivered on the 22nd of June. The record of the evidence and the judgment together fill 69 very closely written pages, an office copy of which, written in the ordinary manner, covered more than 130 pages.

"Such a proceeding is manifestly an abuse of S. 227, which section is intended to apply only to short and simple cases in which but little evidence is needed. As soon as the Magistrate discovered that the question before him was really a dispute between Mr. Gow Smith on behalf of the factory which he represents and the persons who are throughout these proceedings spoken of as "the Tagore Baboos," he ought at once to have declined to proceed further and to have referred the parties to the Civil Court. A *bonâ fide* claim of right deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way. And in this case there was a *bonâ fide* claim or assertion of right, so far at any rate as the accused persons were concerned. To prove that the accused caused damage is not enough. It must be proved against each individual convicted that he caused the damage with a wrongful intent, —with a knowledge that he was not justified in doing it, and that "the Tagore Baboos" had no real title."

Where the jurisdiction to try a case of theft summarily depends on the pecuniary value of the property stolen, a Magistrate should indicate in the Register Statement that the value was such as to bring the offence within his summary power. Mad. H. Ct., Sept. 23, 1878; Weir, 195. It should appear on the face of the conviction what the value of the stolen property was. Abheem Parirah, 20 W. R., 17.

When an accused is also charged with a previous conviction of an offence under Chapter XVII, Penal Code, he cannot be tried summarily as the subsequent offence becomes a different offence from the act when standing alone. Mad. H. Ct. Pro., Sept. 23 1878; Weir, 195.

The confiscation of contraband articles under the Excise or Salt Act following on a conviction would not exclude the offence from the category of offences triable summarily as a summons case. The confiscation is not a part of the sentence but a consequence of it. Boidonath Dass, I. L. R., 3 Cal., 366, FULL BENCH.

Ch. XXII.

S. 261.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447 ;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month ;

(*c*) Abatement of any of the foregoing offences ;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

(S. 225.)

Ss. 15, 16 relate to Benches of Magistrates, their powers and rules for their guidance.

S. 277 of the Indian Penal Code relates to voluntarily fouling the water of a public spring or reservoir so as to render it unfit for ordinary use ;

S. 278, to voluntarily making the atmosphere noxious to the health of the neighbourhood ;

S. 279, to rash or negligent riding or driving on a public way ;

S. 285, to rash or negligent conduct with respect to fire or combustible matter ;

S. 286, to rash or negligent conduct with respect to any explosive substance ;

S. 289, to wilful or negligent conduct with respect to any dangerous animal ;

S. 290, to the commission of a public nuisance ;

S 292, to sale, &c., of obscene books ;

S. 293, to possession of obscene books, &c., for sale, &c. ;

S. 294, to singing, &c., obscene songs, &c., to annoyance of others ;

S. 323, to voluntarily causing hurt without grave or sudden provocation ;

S 334, to voluntarily causing hurt on grave or sudden provocation ;

S. 336, to rashly or negligently endangering human life or personal safety of others ;

S. 341, to wrongful restraint ;

S. 352, to assault or criminal force without grave or sudden provocation ;

S. 426, to mischief ;

S. 447, to criminal trespass.

With the exception of an offence under S. 323, Penal Code, all these offences are summons cases, and as such would fall under S. 260 (*a*) ; voluntarily causing hurt under S. 323 is, however, also triable summarily under S. 260 (*c*).

All sentences passed by a Bench of Magistrates under S. 261 if only exercising powers of the second or third class would be appealable to the District Magistrate. S. 407. If the Bench exercised the powers of a Magistrate of the first class the trial would be held under S. 260, and the right of appeal would be regulated by S. 414.

Any two or more persons authorized to exercise all or any of the powers of a Magistrate, who, until the 1st January 1873, acted together under Act XXVII, 1867, in the cities of Lahore, Jullundhur, Amritsur, Delhi, Gujranwalla, Dera Ismail Khan, and Botala, may sit together as a Bench and such Bench was invested with powers under S. 261. *Punj. Gaz*, 1872, p. 2024.

Procedure for summons and warrant-cases applicable.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases, shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

(S. 226.)

In accordance with this section the procedure in summons cases or warrant cases is to be followed according to the nature of the case, but S. 355 provides that the evidence in summary trials held by Magistrates of the first or second class is to be recorded as in summons cases and this is again subject to S. 263 which directs that, where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses.

All the offences mentioned in S. 260 except (*a*) are warrant cases.

The last para. of this sentence is new and is a very important alteration of the law.

The procedure for the trial of summons cases by Magistrates is contained in Chapter XX, Ss. 241—250.

The procedure for the trial of warrant cases by Magistrates is contained in Chapter XXI, Ss. 251—259.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;
(*b*) the date of the commission of the offence;
(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

(S. 227.)

(*f*) is new, and the words "and his examination if any," have been added to (*g*).

If any Magistrate not being empowered by law in that behalf tries an offender summarily, his proceedings shall be void. S. 530 (*q*).

See note to S. 258 quoting the Court Fees' Act (VII of 1870) Ss. 31, 18 regarding the repayment by an accused, on conviction of a non-cognizable offence or wrongful confinement or wrongful restraint, of Court Fees paid by the complainant.

No appeal lies in any case tried under S. 260 against a sentence of imprisonment only, not exceeding three months; or of fine only, not exceeding two hundred rupees; or of whipping only. S. 414. But an appeal lies against every order of acquittal (S. 417): S. 263 will, nevertheless, probably be held to refer only to appeals against the sentence passed.

If in any summary trial the sentence passed is a combination of one or more of the punishments specified in S. 414 an appeal would lie to the Sessions Court under S. 408. Where a Bench of Magistrates has been vested with powers of a Magistrate of the first class, or unless otherwise provided by an order of the Local Government, one of its members being a Magistrate of that class, it is deemed a Magistrate of that class (S. 15), the same rule would apply in cases tried under S. 260, and also under S. 261, as all the offences specified in the latter are included in the former section, but if the Bench is vested with lower powers, an appeal would lie to the District Magistrate against any sentence passed (S. 404).

No provision is made for the manner in which the examination of an accused person in a summary trial is to be recorded except that it is not to be recorded as in a regular trial (S. 364) probably it would be recorded in the same manner as evidence is recorded in such a trial, but the examination would be only for the purpose of enabling the accused to explain any circumstances appearing in evidence against him. S. 342.

Where a Magistrate had inadvertently omitted to record a judgment as directed by S. 263 (*h*), in a case, in which he had convicted

the accused in a summary trial, it was held that the omission could be remedied by a statement of the reasons for his order subsequently recorded and inasmuch as the requirements of the law had thus been fully complied with, the High Court refused to interfere as a Court of Revision. *In re* Dowlut Singh, 6 Cal. L. R., 273.

The Magistrate should so state the reasons for convicting the accused, that, the High Court, on Revision, may judge whether there are sufficient materials to support the conviction. Where they were not so stated the conviction was set aside. *In re* Punjab Singh, I. L. R., 6 Cal., 579.

In a trial under this Chapter, under a procedure in which the Legislature has provided a minimum of protection for the person affected by the order, it is absolutely necessary that the Magistrate should most strictly observe the scanty formalities prescribed, otherwise it will be absolutely impossible for the High Court as a Court of Revision, or any other authority, to exercise the smallest control over proceedings which may form the subject of complaint. See further remarks of Jackson, J., in the case of Joheri Singh, 22 W. R., 28.

When the offence under trial under Chapter XXII is a warrant case, the prisoner should be called upon to plead to a definite charge which must be made verbally. The final order or judgment in such cases should, where conviction is not made, invariably show whether the accused has been discharged or acquitted, the test being whether after hearing the evidence for the prosecution, the Court has called upon the prisoner to plead to a definite charge or not.—Smyth, pp. 101, 102.

Whenever any Government officer is judicially convicted of any offence, a copy of the decision should be sent to the Head of the Department in which he is employed, in order that such action as may be deemed proper may be taken at once —Govt. of India, Aug. 7, 1868; Govt. of Bengal, 4589, Aug. 22, 1868.

Whenever any officer, enlisted soldier or sepoy is sentenced by a Criminal Court to fine of Rs. 200 or upwards, or to imprisonment otherwise than in default of paying a fine not amounting to Rs. 200, the Court should *proprio motu* send a copy of its final order to the superior of the person convicted.—Govt. of India, 1632, Oct. 3, 1871; Govt. of Bengal, Cir. 58, Oct. 30, 1871; Smyth, p. 148.

Record in appealable cases.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

(S. 228.)

See note to S. 263 as to the summary trials in which an appeal lies against the sentence passed, and note to S. 258 as to the repayment by the accused, on conviction of certain offences, of Court Fees paid by the complainant.

Ch. XXII.
S. 265.

In the case of Kheraj Mullah (20 W. R., 13; (S. C.) 11 B. L. R., 33), the Sessions Judge in an appeal against a conviction pronounced under S. 264, held that from the substance of the evidence recorded, he could not form any opinion as to its credibility, and that there was nothing in the evidence which would warrant him in finding that the witnesses were not speaking the truth, or that the conviction was wrong: he therefore dismissed the appeal. The High Court, however, held that as the Sessions Judge was unable with the aid of the Magistrate's finding to form an independent judgment as to whether the prisoners had committed the offence or not, it was his duty to have acquitted. The conviction was accordingly quashed.

The Allahabad High Court has, however, held under the same circumstances that the Sessions Judge should have required the Magistrate to repair the defect by recording a judgment in which the substance of the evidence should be fully embodied, if necessary re-examining the witnesses for that purpose, or he should have ordered a re-trial. Karan Singh, I. L. R., All. 680.

A re-trial was ordered by the Chief Court, Punjab, in a case falling under S. 264, because the Magistrate had omitted to record a judgment "embodying the *substance* of the evidence on which the conviction was had."—Bakku, Panj. Rec., 1874, p. 3.

In the case of Dowlut Singh, 6 Cal. L. R, 273, the Calcutta High Court refused to interfere in a case in which the Magistrate had omitted to record a judgment, but had subsequently remedied the defect by writing a brief statement of the reasons for his order.

The following Circular 7, July 8, 1876 issued by the Calcutta High Court is deserving of attention:—

The attention of the Court has been recently called to a case in which a Magistrate, having tried an offence summarily and passed a sentence from which an appeal lay, made the record required by S. 264 of the Code of Criminal Procedure as an entry in the register prescribed by S. 263 and on the Appellate Court calling for the record of the trial, cut out and sent up the portion of the register containing this entry. There is reason to believe that this is not an isolated case. The practice of mutilating official registers is open to the gravest objection, and is strictly prohibited; there is no warrant for it in the law.

S. 263 of the Code of Criminal Procedure directs that a register shall be kept for a certain purpose, namely, for the purpose of entering such particulars as are specified in the section, in cases where no appeal lies. The provisions of this section do not apply to any other cases.

The judgment required to be drawn up in appealable cases under S. 264 is to contain the particulars mentioned in S. 263 and something more, namely, the substance of the evidence on which the conviction was had. But it is not to be entered in the register of non-apealable cases, and is evidently intended to be in a separate form, so that, when necessary, it may be submitted to the Court of Appeal.

Language of record and judgment.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the

Court, or if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(Ss. 229, 230.)

CHAPTER XXIII.

Of Trials before High Courts and Courts of Session.

No Sessions Court shall ordinarily take cognizance of any offence as a Court of original jurisdiction unless the accused person has been committed by a Magistrate duly empowered in that behalf (S. 193), that is, by a District Magistrate, a Subdivisional Magistrate, a Magistrate of the first class, or any Magistrate specially empowered by the Local Government (S. 206).

A.—Preliminary.

"High Court" defined.

266. In this chapter, except in section 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjab, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

(Act X of 1875, S. 3.)

Compare the definition given in S. 4 (*i*).

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

Ch. XXIII.

Ss. 268, 269.

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

(Act X of 1875, S. 32.)

Trials before court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

(S. 232.)

Local Government may order trials before Court of Session to be by jury.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

(S. 233, paras. 1, 2.)

The Government of Bengal has ordered [January 7th, 1862 *Gaz.* 1862, p. 87] that, in the Districts of the 24-Pergunnahs, Hooghly, Burdwan, Moorshedabad, Nuddea, Patna, and Dacca, the trial by any Court of Session of any of the offences provided for by Chapters VIII, XI, XVI, and XVII of the Indian Penal Code shall be by Jury. These Chapters relate to offences against the public tranquillity: false evidence and offences against public justice: offences affecting the human body: offences against property. On May 27th, 1862, (*Gaz.* 1862, p. 2041,) offences under Chapter XVIII of the Indian Penal Code, *i. e.*, offences relating to documents and to trade or property marks, were added to the above list: and on October 13th, 1862, (*Gaz.* p. 3416,) it was further extended by the addition of trials for abetments of, or attempts to commit, any of the above offences. In the Province of Assam *all* trials in the Sessions Court are held by Jury.—Govt. of Bengal, March 28, 1862, *Gaz.* p. 1286.

After the Government order that the trial of all offences by the Court of Session in Assam should be by Jury, Goalparah, then a District of Assam, was transferred to Cooch Behar, and made subordinate to the Sessions Court of that Province,—held, that trial by Jury in Goalparah ceased on its transfer from Assam.—Khoodeeram 8 W. R., 39. It has, however, since been ordered that the trial of all offences in the Sessions Court at Goalparah be held by Jury.—Govt. of Bengal, August 21, 1867.

In MADRAS the Government has introduced the system of trial by Jury into the Sessions Courts of Chittoor, Cuddapah, Rajahmundry, Tanjore, Tranquebar, Cuddalore, and Vizagapatam, but only for the following offences:—

Theft, under Ss. 379, 380, 381, Penal Code.

Robbery or gang robbery, under Ss. 392-3-4-5, 397-8-9, 400-1-2.

Receiving stolen property, under Ss. 411-12-14.

House-breaking, &c. Ss. 451-2-3-4 5-6-7-8-9, 461.

In the Presidency of BOMBAY, trial by Jury is held only in the Sessions Court of Poona for all offences under Chapters VIII, XI, XII, XVI, XVII, XVIII of Penal Code, punishable with death, transportation for life, or imprisonment for ten years or upwards; also for all abetments of, and attempts to commit, any of such offences.—Not. Govt. Bomb., Not. August 31, 1867.

All offences tried before the Recorder or Judge of Rangoon or Moulmein shall be by Jury. British Burma, *Gaz.* Dec. 25, 1875, Part II, p. 233.

If an offence triable with the aid of Assessors is tried by a Jury, the trial shall not on that ground be invalid. If an offence triable by a Jury is tried with the aid of Assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records the finding. S. 536.

Where a case triable partly by Jury and partly with Assessors was inadvertently tried by Jury and the error was discovered after taking the verdict of the Jury, it was not competent to the Judge to treat the trial, as regards some of the charges, to have been held with Assessors and to convict on those charges against the verdict delivered. After delivery of the verdict, the trial by Jury cannot be declared by the Sessions Judge to be invalid; he is not competent to change the character of the trial. Bhootnath Dey, 4 Cal. L. R., 405.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

(S. 235.)

Public Prosecutors are appointed by the Governor-General in Council or the Local Government, generally, or in any case, or for any specified class of cases in any local area. S. 492.

In Sessions trials, in the absence of the Prosecutor or where no Public Prosecutor has been appointed, the District Magistrate or, subject to his control, the Sub-divisional Magistrate may appoint any other person not being an officer of Police below the rank of Assistant District Superintendent to be Public Prosecutor for the purpose of that case. S. 493. See Ramchunder Sircar, 13 W R., 18 where the practice of ordering the prosecution in Sessions trials to be conducted by officers of Police was declared to be objectionable. If a private person instructs a pleader, see definition S. 4 (*n*), to conduct the prosecution, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act under his directions S. 493.

S 270. In BOMBAY, the High Court has directed that Criminal Sessions shall commence in each District on the first Monday of each month, except when it shall be a close holiday, and, in that case, on the next Court day. Sessions Judges are required to give notice to Magistrates once for all, up to what date after the commencement of the Sessions they will receive cases and prisoners for trial at the same Session.—Bom. H. Ct. Cir., 39.

In BENGAL the following rules have been laid down for the fixing of periodical Sessions (Cal. H. Ct., Cir. 4, May 6, 1868):—

The Judge will, in the first week of December in each year, fix the number of Sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year) and the Magistrate of the District in communication with all the Subordinate Magistrates who exercise the power of committing to the Sessions, and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Sessions Judge, two days before the commencement of each Session, a Calendar of all such cases in the form annexed:—

Calendar of accused persons for trial before the Court of Session.

Sessions of 187 .

Number of case.	Committing Officer.	Number and name of accused	Charges and Section, Indian Penal Code.	Date of offence.	Date of apprehension or appearance to summons.	Date of commitment.	In Jail or on Bail.

The names of the witnesses should be placed on the back of the Charge Sheet.

The Magistrate will be careful to arrange the commitments with a view to the trials taking place at the earliest or next ensuing Session, in order to avoid the needless detention of accused persons for prolonged periods.

Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the District, by a letter in the annexed form:—

FROM

THE MAGISTRATE OF

To

THE SESSIONS JUDGE OF

SIR,

I beg to report that I have this day committed to take his

trial before the Court of Session the person named in the margin on the charge specified below.

Ch. XXIII.

S. 270.

I have, &c.
A. B.,
Magistrate (as the case may be).

CHARGES.
1
2

It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the Criminal Sessions, and consequently at what period he will be able to take up civil business thereafter.

Prosecutors and witnesses will be bound over to appear "at the next Criminal Sessions commencing on ."

But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the Court of Session that such parties may not be brought from their homes to the Sudder Station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

The directions herein contained for committing Magistrates are to be observed, so far as they are applicable by Civil Courts and other authorities committing persons for trial at the Sessions.

In MADRAS the following rules are in force:—

A monthly Session for the trial of criminal cases is to be held in every District. Jurors, assessors, prosecutors, witnesses, and defendants admitted to bail should be required to attend on the first Monday, or, if that is an authorized holiday, on the first Court day after the first Monday in each month. No departure from this rule is permissible without the previous sanction of the High Court. There will be no Sessions during the adjournment of the Courts, but a special Session must be held before the adjournment. Due notice must be given in the District Gazette of the days of the month on which the several Sessions will respectively commence, and the Magistracy will make their commitments accordingly, taking care that there is sufficient time for the parties to reach the Court before the first day of the Sessions.

All cases in which the records may be received and the parties present before the first day of any Session should be tried at such Session.—Mad. H Ct., April 10, 1862; Weir, *App.* xlv: Nov. 14, 1862; Weir, *App.* xlvii.

On the termination of each Session, a statement should be submitted to the High Court and published in the District Gazette showing the number of cases and persons brought before the Court, the number disposed of and the number postponed, distinguishing those cases in which a capital sentence has been recorded.—Mad. H. Ct., Sept. 29, 1862; Weir, *App.* xlvi.

In the PUNJAB it has been ordered that Jail deliveries of each District should be held at intervals of not more than ninety days, if there are prisoners awaiting trial, the selection of the time being left to the Judge.—Smyth, p. 98.

Ch. XXIII.

S. 271.

Commencement of trials.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

(S. 237.)

When any person is committed for trial without a charge or with an imperfect or erroneous charge, the Court, or in the case of a High Court, the Clerk of the Crown may frame a charge or add to or otherwise alter the charge as the case may be. S. 226. The Court may also alter any charge at any time before the verdict of the jury is returned or the opinions of the assessors are expressed, every such alteration being read and explained to the accused, (S. 227,) and may either proceed with the trial, (S. 228,) or direct a new trial or adjourn the trial for such period as may be necessary, (S. 229,) but whenever a charge is altered after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine with reference to such alteration any witness who may have been examined. S. 231.

When the accused is charged with an offence after a previous conviction for any offence, that part of the charge shall be reserved until the accused has either pleaded guilty to, or been convicted of the subsequent offence.—A special procedure is provided for such cases. See S. 310.

It should appear on the face of the proceedings that the charge has been duly read and explained to the accused and his plea shall be recorded. Gopal Dhanook, 6 L. R., 7 Cal., 96; (S. C.) 8 Cal. L. R., 471.

The accused person should plead to the charge by his own mouth, and not through his pleader.—Roopa Goalla, 15 W. R., 42.

Where a charge is regarding an offence which has a special meaning (*e. g.* murder) it should be fully explained to the prisoner; an admission that he killed the accused is not a plea of guilty. Vaimbillee I. L. R., 5 Cal., 826. An admission which is not an admission of all the elements of the charge is not a plea of guilty. Golap Dhanook, 8 Cal. L. R., 471.

So where the prisoner admitted that he had killed his wife, but added that at the time he was not in his right mind, a Judge should proceed to choose Jurors or Assessors, and proceed to hold a regular trial.—Cheyt Ram, 5 All., 110.

No inference can be drawn from a plea; if it does not amount to a distinct confession of the charge, the charge must be proved.—Mad. H. Ct. Pro, Dec. 14, 1874; 7 Mad. Jur., 136.

If the accused person pleads guilty, it is unnecessary to call for an opinion from the Assessors (5 W. R., 2 C. L., 6; *Ibid*, 4; Mad. H. Ct., Sept. 27, 1863), or a verdict from the Jury (6 W. R., 1 C. L), or even to appoint Assessors.—Sreekant Ghosal, 10 W. R., 13; (S. C.) 2 B. L. R., *Full Bench*, 28.

When an accused person pleads guilty, and is forthwith convicted by the Sessions Judge, the following finding should be used :—The accused pleads guilty of , and the Court directs, &c., &c.—8 W. R., 21, C. L.

If the accused person plead guilty, it is not absolutely necessary to record the evidence for the prosecution [Cal. H. Ct., 359, 1882]; the Sessions Judge may record it if he thinks proper [*Id.*, 810, 1863]; but it may be sometimes necessary to proceed with the trial, as for instance when a person is accused of having intentionally given false evidence by making statements which are contradictory one of the other, and he may plead guilty of having falsely made one statement. Here the two statements may be both false; and because the prisoner has pleaded guilty to one charge, he should not of necessity be acquitted of the other. Looking to the special nature of such charge, the prisoner ought not to be allowed to elect which statement he shall admit to be false: the fact should rather be tried, as under S. 237 it is optional with the Court to do.—8 W. R., 6, C. L.

If the prisoner pleads guilty and the evidence before the committing Magistrate raises great doubt whether at the time of committing the offence, he was, by reason of unsoundness of mind, capable of knowing the nature of the act charged or that he was doing what was wrong or contrary to law, the Sessions Judge should not convict on that plea, but should proceed with the trial, recording the evidence and taking the verdict of the jury or the opinions of the assessors. Vaimbillee, I. L. R., 5 Cal., 826.

But if after pleading guilty and claiming to be tried, a prisoner confesses in the course of the trial, the Sessions Judge cannot convict him on such confession without taking the verdict of the Jury. Mad. H. Ct. Pro., Nov. 12, 1866; Weir, 197. This would also apply to the opinions of the Assessors where that form of trial is held.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or, if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

(Ss. 238, 268.)

If the prisoner pleads not guilty, he must be tried; he cannot be convicted at once on a confession made to a Magistrate.—Hursookh, 2 All., 479. If there is no evidence offered for the prosecution, the prisoner should be called upon to plead to the charge, and if he pleads not guilty, the Judge should instruct the jury or assessors that they are bound to find him not guilty.—4 Mad., xxxix, *App.*, Pro., March 9, 1869.

Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may with the consent of the Court, in cases tried by jury before the verdict of the jury, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal, after a charge has been framed, he shall be acquitted. S. 494.

When the accused person makes no answer to the inquiry whether he is guilty or has any defence to make, it should be ascertained whether he is obstinately mute or dumb *ex visitatione dei*. If he be found to be obstinately mute, the plea of not guilty should be recorded, and the trial should proceed. If he be found to be dumb *ex visitatione dei*, an inquiry should be made as to whether he is sane or insane or incapable of being tried. If found sane, a plea of not guilty should be recorded, and the trial should proceed, but if found to be insane, the procedure laid down by Chapter XXXI should be followed.—Bom. H. Ct., Sattya Nandi Appa, August 9, 1869.

The accused person should not be examined by the Sessions Judge *immediately* after he has been called upon to plead, if his plea be "not guilty."—3 Agra, 85. An examination under the present Code is for the purpose of enabling the accused to explain any circumstance appearing in evidence against him. S. 342.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

(Act X, 1875, S. 14.)

In a Sessions trial the Public Prosecutor with the consent of the Court can at any time withdraw from the prosecution of any person S. 494. See note to S. 272 *ante*.

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular class of offences in that district, may direct.

(Act X, 1875, S. 32.)

The number of the jury has been fixed by the several Local Governments thus: in BENGAL five; *Cal. Gaz.* 1873, Part I, 741; in MADRAS five; *Gaz.*, 1873, p. 718: in BOMBAY, five when a European not being a European British subject or American is the accused or one of the accused, and also in the Court of Session at Poona; GAZ., 1873, p. 129: in the N. W. PROVINCES, seven; Aug. 23, 1873, p. 1042; in the PUNJAB, nine in Lahore, Delhi, Rawul Pindee and Peshawur, five in Umballa, Multan and Sealkote, three in all other Districts *Gaz.*, Jan. 30, 1873, p. 70; in the CENTRAL PROVINCES, five in Nagpore, Jubbulpore, Saugor, Raipore, Hoshungabad, three in all other Districts.—*Gaz.*, Jan. 25, 1873, Part IA, p. 18.

Jury for trial of persons not Europeans or Americans before Court of Session.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

(S. 241.)

There is no such right if the trial is held with the aid of Assessors who are chosen as the Judge thinks fit from the persons summoned to act as such. S. 284.

In trials of European British subjects before a Court of Session, if before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors not less than half the number of jurors or assessors shall be Europeans or Americans or both Europeans and Americans. S. 451.

Jurors to be chosen by lot.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Proviso.

Provided that—

Existing practice maintained.

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Persons not summoned when eligible.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Trials before special jurors.

thirdly, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

(Ss. 240, 243.)
(Act X, 1875, Ss. 33, 38, 49.)

Subject to the right of objection, the same jury may try as many accused persons successively as the Court thinks fit. S. 272.

The practice in the High Court, Bombay, original criminal jurisdiction, regarding choosing persons by lot is described in the case of Reg *v.* Vithaldas Pranjivandas and others, I. L. R., Bomb. 462. For the practice in Calcutta see Belchambers, *Rules and Orders*, pp. 261, 262.

Before the commencement of the proceedings of a trial, the Sessions Judge should record, in English, the names of all the jurymen in attendance at the Sessions, and, after selection by lot, under S. 276, of the persons who constitute the jury in the particular case before the Court, the names of those selected. These papers should form part of the record of the case. If any objection be raised to any juror, the name of the objector, the nature of the objection, and the decision of the Court should be recorded.—Cal. H. Ct. Cir. 4, June 23, 1865.

Names of jurors to be called.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

(S. 243, paras. 1, 2.)
(Act X, 1875, Ss. 47, 53.)

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

(Ss. 244, 245, 405, 406.)

(Act X, 1875, Ss. 47, 54, 57.)

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

(S. 243, paras. 3, 4.)

If any objection be made to a juror, the name of the objector, the nature of the objection, and the decision of the Court should be recorded. Cal. H Ct. Cir. 4, June 23, 1865.

Foreman of jury.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

Ch. XXIII.

S. 281.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

(S. 246.)

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Swearing of jurors.

(New.)

Christian jurors, to whom oaths are administered, should be sworn on the New Testament.

The following forms of oaths and affirmations for jurors have been introduced by the several High Courts :—

In BENGAL, (Cal. H. Ct. Cir. 12, June 7, 1873 ; Wilkins, 87).

(*Oath.*)

I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

So help me God.

(*Affirmation.*)

I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

In MADRAS, (Mad, H. Ct., Aug. 16, 1873.)

(*Oath.*)

You shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict give according to the evidence.

So help you God.

(*Affirmation.*)

I solemnly affirm in the presence of Almighty God that I will judge truly between the Queen and the prisoner at the bar, and will give a true verdict according to the evidence.

In the NORTH WESTERN PROVINCES, (Cir. 4, May 2, 1873) ; and in the PUNJAB (C. Ct., Punjab Cir. 1X, May 8, 1873 ; Smyth, 233, 234).

(*Oath.*)

I shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence. So help me God.

(*Affirmation.*)

I solemnly affirm in the presence of Al nighty God that I shall well

and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence.

Procedure when juror ceases to attend, &c

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted; a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

(S. 254.)

Any juror who fails to attend after an adjournment of the Court after being ordered to attend is liable by order of the Court of Session to a fine not exceeding one hundred Rupees, or in default of recovery of the fine to imprisonment in the Civil Jail for the term of fifteen days, unless the fine be paid before the end of that term. S. 332.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

(Act X, 1874, S. 99.)

D.—Choosing Assessors.

Assessors how chosen.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

(S. 239.)

The law does not as in the case of jurors provide for objections being made to an assessor. The choice of jurors is by lot, but of assessors entirely with the Sessions Judge who in exercising this power will no doubt pay every consideration to any reasonable objection raised.

The same assessors may aid in the trial of as many persons successively as the Court thinks fit. S. 272.

Procedure when assessor is unable to attend.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any

sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

(S. 259.)

An assessor failing to attend after an adjournment of the Court after being ordered to attend is liable by order of the Court of Session to a fine not exceeding one hundred Rupees or on default of recovery of the fine imposed to be imprisoned by order of the same Court in the Civil Jail for the term of fifteen days unless such fine is paid before the end of that term. S. 332.

E.—Trial to Close of Cases for Prosecution and Defence.

Opening case for prosecution.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

The prosecutor shall then examine his witnesses.

Examination of witnesses.

(S. 247.)

The jurors or assessors may put any question to the witnesses through or by leave of the Judge which the Judge himself might put, and which he considers proper. Act I, 1872, S. 166.

Examination of accused before Magistrate to be evidence

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

(S. 248.)

From the use of the words "by or before the committing Magistrate," S 287 would not apply to a statement or confession recorded under S. 164 by another Magistrate. But such statement or confession would nevertheless be receivable in evidence if put in as it should be.

Whenever any document is produced before any Court purporting to be a statement or confession made by any prisoner or accused person taken in accordance with law and purporting to be signed by any Ma-

gistrate, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken. purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. Act I, 1872 (Evidence Act), S. 80.

If any Court before which a confession or other statement of an accused person recorded under S. 164 or 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and notwithstanding anything contained in the Indian Evidence Act S. 91 such statement shall be admitted if the error has not injured the accused as to his defence on the merits. S. 533.

If the confession of an accused person before the Magistrate forms part of the evidence against the persons committed for trial to the Court of Session, it should be accompanied by a translation into English.—Cal. H. Ct. Cir. 4, Aug. 10, 1872. Wilkins, 105.

It is not optional with the prosecution to tender as evidence the examination of the accused person before the committing Magistrate. If it is not put in, the Judge is bound to call for it and to require it to be put in.—Sheikh Mehr Chand, 13 W. R., 63.

It should be put in and read as a part of the case for the prosecution, before the accused person is called upon to enter on his defence. It should be detached from the record of the preliminary inquiry, and attached to that of the trial (Cal. H. Ct. Cir. 11, Sept. 2, 1867, Wilkins, 104, also Cir. 4, Aug. 10, 1872, *Id.* 105) and marked as an exhibit, a note to the effect that this has been done being entered on the record.—Mad. H. Ct., March 31, 1869.

The Judge is not bound to read over to the accused persons the confessions made by them to the Magistrate, and to ask them expressly if they have any objection to the reception of those confessions.—Misser Sheikh, 14 W. R., 9.

The statement made by an accused person must be taken in its entirety. In a case in which the only evidence against the prisoner was his statement that he accompanied the dacoits for a short distance, but turned back almost immediately, and had nothing to do with the dacoits, and did not even know that such an offence was in contemplation, it was held that this amounted to no evidence, and he was acquitted.—Greodharee Manjee, 7 W. R., 39; see also Sheikh Boodhhoo, 8 W. R., 38; also Krishto Mundul, 7 W. R., 7.

A confession made before a Magistrate, but retracted before the Sessions Court, is still evidence against the prisoner, and sufficient for his conviction, provided that the Court is satisfied that it was voluntarily made and is genuine.—Sreemotee Mongola, 6 W. R., 81; Jhuree, 7 W. R., 41; Mussamut Jema, 8 W. R., 40. It is not necessary that a confession should be corroborated by other evidence.—Runjeet Sonthal, 6 W. R., 73; Chokoo Khan, 5 W. R., 70; Bhukan Rajwan, 12 W. R., 49.

But where the only evidence in a Sessions trial is a confession made to a Magistrate, and subsequently retracted before the case left that Court, and misconduct on the part of the Police in the investigation is proved, it is not safe to convict on such evidence without corroboration. Sofurooddin and others, 2 Cal. L. R., 132.

Ch. XXIII. — S. 288.

The Evidence Act (I, 1872), S. 30, declares, that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons, affecting himself and some other of such persons, is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

This has been discussed in many judgments of the High Courts, the substance of which will be found on a reference to that law in the Appendix.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

(S. 249.)

To bring S. 288 into effect, the particular witness must have been examined in the High Court or Sessions Court, his evidence must have been taken before the committing Magistrate in the presence of the accused, and an opportunity for cross-examination given. Dham Mundul and others, Cal. H. Ct., Feb. 25, 1880. A witness is not always examined in the presence of the accused, for instance, he may be examined by commission (Ss. 503—508) or if it proved that the accused has absconded and there is no immediate prospect of arresting him, the committing Magistrate may, in his absence, examine witnesses on behalf of the prosecution and record their depositions, and any such deposition may be given in evidence on the subsequent trial of the accused, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable. S. 512. The Evidence Act S. 33 also enables a Court under the same circumstances, and also if the witness is kept out of the way by the adverse party, to use as evidence, evidence given by a witness in a judicial proceeding for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it relates. Provided that the proceeding was between the same parties;

that the adverse party in the first proceeding had the right and opportunity to cross-examine, and

that the questions in issue were substantially the same in the first as the second proceeding—

Explanation. A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

If a Sessions Court acts in accordance with S. 288, it should incorporate with the record of its own proceedings the evidence taken by the committing Magistrate. See Cal. H. Ct. Cir. 4, Aug. 10, 1872. Wilkins, 105.

A certificate of a Magistrate would, under S. 80 of the Evidence Act, afford *primâ facie* evidence of the circumstances mentioned in it

relative to the taking of the statement, &c., but the Magistrate did not record any of the facts necessary to render a deposition admissible under S. 288 of the Code. Moreover, if he did record those facts, still, inasmuch as the witness, when examined as a witness before the Sessions Court and asked about the alleged deposition, denied that it was the deposition made by him, the presumption allowed by S. 80 of the Evidence Act could not be made; and it became necessary to show by direct testimony that the conditions of S. 288 had been satisfied. Evidence was therefore under S. 428 of the Code called for by the High Court to prove the deposition within the terms of the S. 288.—Nussuroodden, 21 W. R., 5.

The purpose of S. 288, as recently amended, is to make depositions given before Magistrates in the preliminary inquiry evidence for the purposes of the trial in the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But we think that the exercise of this discretion, considering it as a matter of fact or of law, is open to review by this Court in appeal. When a case is under trial in a Court of Session, the Sessions Judge has the depositions given in the Magistrate's Court before him. If he finds that the statements of the witnesses in his own Court differ materially from those previously made by the same witnesses, it is his duty to examine them as to the discrepancies, and this is more especially his duty when the prisoners are undefended, and contradictory testimony is given for the prosecution. But if he thus examines the witnesses, he ought—see Taylor on Evidence, Ss. 1300, 1301, and the Indian Evidence Act, S. 155,—in ordinary cases to make the depositions upon which he has examined them evidence in the case; he is at liberty to do so, and the power should be exercised so as to bring all relevant matter, so far as possible, under consideration in forming a judgment on the case. If the Sessions Judge has omitted to examine witnesses on obvious and important discrepancies in their statements, this Court will, in general, direct that such an examination be made, and the Sessions Judge having the witnesses before him for such purpose, will, in most cases, feel it his duty to make the former depositions evidence *quantum valeant* for the purpose of the final adjudication on appeal. The alternative is for this Court in such cases to order a new trial on the ground that there has been a misuse of the Sessions Judge's discretion which may have caused a failure of justice, but a new trial will not be ordered except in special cases. *Per* West, J., Arjun Megra, 11 Bom., 281.

The judgment of the Calcutta High Court in the case of Amanoolla, 21 W. R., 49; (S. C.); 12 B. L. R., 15 *App.*: is very important in connection with S. 288.

PHEAR, J.—In other words, the Judge founds his conviction of the prisoner on the charge of murder upon the testimony which was given before another judicial officer, not before himself, by the very persons who, according to his own view before him, showed themselves in the very same matter to be utterly unworthy of belief. Even if S. 288 warranted the Court in taking such a step as this, it seems to me certainly an inordinately long step to take, and I might almost say that the logical consequence would be that the taking of evidence in the Sessions Court might be altogether dispensed with: for if it is legitimate,

Ch. XXIII. — S. 288.

proper, and safe that the Sessions Court should come to a verdict against the prisoner upon the evidence given before the Magistrate by witnesses who before the Sessions Court denied that evidence, and showed themselves unworthy of belief, *à fortiori*, it would be right, proper, and safe for the Sessions Court to found its judgment upon the evidence given before the Magistrate in those cases where the witnesses afterwards confirm that evidence by the testimony which they give in the Sessions Court. And I think that this very obvious consequence shows very conclusively that the Judge misapprehended the true scope of S. 288 of the Criminal Procedure Code.

It appears to me that the Legislature, in framing this enactment, desired merely to authorize the Court to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent therewith was made, by the witnesses before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief Not that the Court should discard wholly the testimony of witnesses given before it, and have recourse to the testimony of the same persons which was given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial. The discretion which is conferred by the passage "if the Court thinks fit" in S. 288 is to be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not, as was the case here, upon mere speculation or conjecture.

MORRIS, J.—I quite agree in the view of the evidence taken by my learned brother in this case. I also think that it was not safe to convict the accused Amanoolla solely on the evidence given by the witnesses before the Magistrate—witnesses whom the Judge considered had perjured themselves before him. It seems to me that, under S. 288 of the Criminal Procedure Code, a Judge may base his judgement on the evidence given before the Magistrate in the presence of the accused, where there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is, to a certain extent, corroborated by independent testimony before himself. In the present instance there is nothing of this kind. There is really no one such substantive fact exclusively proved as can enable the Judge to say with confidence that the evidence given before the Magistrate was true as opposed to what was said before himself. Nor can it be said that the Police officer or any other witness before the Court of Sessions affords independent testimony corroborative of the evidence given before the Magistrate.

The question arose in the case of Joyaddee Paramanick, 7 Cal. L. R., 61, whether the statement of an approver before a Magistrate was admissible as evidence in the Sessions trial after he had retracted that statement and the pardon had been cancelled. The High Court was inclined to hold that the former statement was inadmissible except against the person who made it, as he had ceased to sustain the character of witness in the Sessions Court, but in the absence of any argument in the case the High Court declined to hold that evidence was absolutely irrelevant, adding that the value to be attached to it was so exceedingly

small that it ought not to affect the case made against the other prisoners by the case of that evidence. In Queen *v.* Hardewa (N. W. P., 1873, p. 217) it was decided by the Allahabad High Court that if an approver in the Session Court retracts his statement before the Magistrate that statement is inadmissible against the prisoner. Similarly in Empress *v.* Najam, 2 Leg. Rem., 170, Straight, J. stated, "For my own part, I confess and entertain the gravest doubts as to whether S. 288 was ever intended to be applied to the case of an approver who has made a deposition before the Magistrate, but in the Sessions Court withdraws it *in toto* upon the allegation, that it was not a voluntary but an enforced statement. Even if S. 288 has any applicability, the Judge would have exercised a sounder discretion had he discarded the statement altogether. It was not the case of a witness giving evidence before him inconsistent with or contrary to a former statement or statements made to the committing Magistrate; on the contrary he admitted his depositions but declared that it was brought about by the coercion of the Police. At any rate the proper course would have been to call his attention to the various passages of his deposition *seriatim* before using it to contradict him."

Procedure after examination of witnesses for prosecution.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused commttted the offence, the Court shall call on the accused to enter on his defence.

(S. 251, paras. 1, 2.)

Ch. XXIII.

S. 289.

The judgment delivered in the case of Dhumoo Kazee, 10 Cal. L. R., 151 : (S. C.) I. L. R., 8 Cal , 121, is very important as pointing out the relative positions and obligations of the prosecution and defence in a trial.

The only legitimate object of a prosecution is to secure not a conviction but that justice be done. The prosecutor is not therefore free to choose how much evidence he will lay before the Court. He is bound to produce all the evidence in his power directly bearing on the charge. It is *primâ facie* his duty accordingly to call those witnesses who from their connection with the transaction in question must be able to give important evidence. The only thing which can relieve the prosecutor from calling such witnesses is the reasonable belief that if called they will not speak the truth. If such witnesses are not called without sufficient reason being shown and the mere fact of their being summoned for the defence seems to us by no means necessarily a sufficient reason the Court may properly draw an inference adverse to the prosecution. There is no corresponding inference against the accused. He is merely on the defensive and owes no duty to any one except himself. He is at liberty, as to the whole or any part of the evidence against him, to rely on the witnesses of the case for the prosecution, and to call witnesses and to meet the charge in any way he chooses : and no inference unfavourable to him can properly be drawn because he takes one course rather than another. If in the present case the witnesses referred to by the Sessions Judge are thought to be trustworthy men then the prosecution was bound to call them. If they are thought not to be so, it is especially unreasonable to reproach the accused for not calling them.—Dhunnoo Kazee, 10 Cal. L. R., 151 : (S. C.) I. L. R., 8 Cal., 121.

Witnesses examined before the committing Magistrate or summoned for the prosecution and not examined on the trial because the case is thought to be sufficiently proved should be tendered by the prosecutor for cross-examination by the accused. *A fortiori* if such a witness has been called and examined by the Court under S. 165 of the Evidence Act the prisoner should be allowed to cross-examine.—Grish Chunder Talookdar, I. L. R., 5 Cal. 614.

On the other hand it has been held by the Bombay High Court that as there is no provision of the Code entitling a person to have a witness for the prosecution who is not called put into the box for cross-examination. The Counsel for the defence might have applied to have such a witness examined or he might have commented on his not being examined for the prosecution or tendered for cross-examination.—Futteechand Vastichand, 5 Bom., 85, *Crown Cases.*

It is not necessary to take the opinion of Assessors when the Court thinks that there are no grounds for proceeding.—Parvati, 7 Bomb., 82, *Crown Cases.*

When the evidence, if believed, does not amount to proof, the case should not be put to the Jury, as a verdict of guilty cannot be sustained.—Rutton Dass, 16 W. R., 19. The Jury should be instructed to return a verdict of acquittal. But when it is a question as to the credibility of the evidence, it must be left to the Jury, though the Judge himself may disbelieve that evidence.—Hurro Shahu, 16 W. R., 20.

With the permission of the Court any Advocate or Pleader may address the Court in English when any one of the Pleaders in the opposite side is acquainted with that language, or whenever the Senior of such Pleaders or his client consents to such.—Cal. H. Ct. Cir. 4, March 15, 1869. Wilkins, 75.

By the terms 'the prosecutor may sum up his case,' it is not intended to exclude the assistance of Counsel for this purpose when such assistance has been accepted by the public prosecutor or other officer conducting the prosecution.—Narayan Pendshe, 11 Bom., 102.

There is nothing in the law which prohibits a written defence; if presented, it should be received.—2 Agra, 356. Sessions Judges should put on record any statement that the accused person may make on his being called upon to enter upon his defence; and if no statement be made by the accused, the fact should be noted by the Judge.—Agra Sud. Ct. Cir 6, 1863.

If the accused makes any statement on his defence, it should be recorded. If he does not voluntarily make any statement, and declines to answer any question put by the Court, the fact should be noted, and when there is nothing else to show the nature of the defence, a note of the address to the Court (if any) should be recorded. The record is not complete unless it shows the nature of the defence set up.—Gopal Hajjam, 15 W. R., 16: (S. C.): 13 W. R., 15, 36.

After the examination of the witnesses for the defence, the Sessions Judge recalled one of the witnesses for the prosecution and examined him. The proceedings were quashed and a fresh trial ordered, because the prisoner had no opportunity of making a defence or calling evidence with reference to the fresh evidence admitted after the prisoner had concluded his defence—Asanoolla, 13 W. R., 15; but where evidence so received was evidence of which the prisoner had full notice, it was held that the irregularity was not one which had or could have occasioned a failure of justice, and therefore the High Court would not interfere.—Sham Kishore Haldar, 13 W. R., 36.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

(S. 251, para. 3.)

Every accused person may of right be defended by a pleader. S. 340.

There is nothing in the law which prohibits a written defence; if presented, it should be received.—2 Agra, 356. Sessions Judges should put on record any statement that the accused person may make on his being called upon to enter upon his defence; and if no statement be made by the accused, the fact should be noted by the Judge.—*Id.*, Cir. 6, 1863. Under S. 218 *ante*, if the accused person in the trial of a warrant case before a Magistrate puts in any written statement, the Magistrate may file it with the record, but he is not bound to do so.

XXIII. Ss. 291-293.

If the accused makes any statement on his defence, it should be recorded. If he does not voluntarily make any statement, and declines to answer any question put by the Court, the fact should be noted, and when there is nothing else to show the nature of the defence, a note of the address to the Court (if any) should be recorded. The record is not complete unless it shows the nature of the defence set up.—Gopal Hajjam, 15 W. R., 16; (S. C.) 13 W. R, 15, 36.

Right of accused as to examination and summoning of witnesses

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

(S. 363.)

A Sessions Judge is bound to postpone a case in which a witness summoned for the defence is absent, especially if he be a material witness, and the case cannot be satisfactorily decided in his absence.—Ishan Dutt, 6 B. L. R., lxxxviii, App.; 15 W. R, 34.

Under S. 211 the accused is required, after the charge has been read and explained to him, at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on the trial, and the Magistrate in his discretion may allow him to give in any further list of witnesses at a subsequent time. The accused may also at any time before his trial before a High Court give to the Clerk of the Crown a further list of witnesses whom he wishes to have summoned.

S. 231 declares the right of the accused to recall and resummon any witnesses examined when a charge has been altered by the Court after the commencement of the trial.

Prosecutor's right of reply.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

(S. 252.)

View by jury or assessors.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the

SECRETARIAT LIBRARY.

Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jurors or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

(S. 253.)

The Calcutta High Court condemned the proceedings of a Sessions Judge who permitted the assessors in a trial to visit the scene of the alleged offence without adopting the precautions provided by S. 293, and ordered certain of the witnesses to attend with the assessors, and at the same time pressed upon the latter the necessity of orally examining the witnesses, if they deemed proper to do so, in the presence of the accused, who would be present.—Chutterdharee Singh, 5 W. R., 59.

If a Sessions Judge should desire to visit the scene of the alleged occurrence of the offence under trial, he should give notice to the parties and should proceed thither with the assessors and not after they have delivered their opinions and the case has closed and awaits delivery of the judgment. When this course was taken it was declared to be ill-advised and to be altogether without any authority.—Oudh Behari Narain Singh, 1 Cal. L. R., 143.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

(S. 293.)

The term "relevant fact" used here is to be found throughout the Evidence Act. See Ss. 5 *et seq.*, which declare what are relevant facts.

In the same way a Judge can be examined as a witness in a trial held before himself. See the case of Mookta Singh, 13 W. R., 60, in which the following remarks were made per Norman, J.:—"No doubt it is extremely inconvenient that a Judge sitting without a jury should try a case in which he himself is the complainant and principal witness. I should have no doubt that if he has any personal or pecuniary interest in the subject of the charge, he is disqualified from trying it. But if that is not the case, if the Judge, in making the complaint, has acted merely in discharge of his duty as a public officer, I think we must say he is not incompetent to try the case."

In the same case, after citing the English cases, it was said:—"I think it pretty clear that a prisoner has a right to ask to have the evidence of a Sessions Judge who is trying him taken on a point which he thinks makes in his favour."

Ch. XXIII.

Ss. 295-298.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

(S. 260.)

A Sessions Judge is bound to postpone a case in which a witness summoned for the defence is absent, especially if he be a material witness, and the case cannot be satisfactorily decided in his absence.—Ishan Dutt, 6 B. L. R., lxxxvii, App.; (S. C.): 15 W. R., 34.

Failure on the part of a juror or assessor to attend after an adjournment of the Court after being ordered to attend renders the juror or assessor liable to a fine not exceeding one hundred rupees, or, in default of recovery of the fine by attachment and sale of his moveable property, to imprisonment by order of the Court in the Civil jail for the term of fifteen days unless such fine is paid before the end of such term. S. 332.

Locking-up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

(Act X of 1875, S. 65.)

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence, and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

(S. 255, para, 1.)

The Court of Session, in trials by jury, shall record the heads of the charge to the jury. S. 367.

It is not necessary that a statement of the Judge's direction to the jury should be reduced to writing before delivery, but it should represent with absolute accuracy the substance of the charge, so as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—Cal. H. Ct., Cir. Memo. 2, 1875; 23 W. R., 7, *Rules &c.*.

Duty of Judge

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proved to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

(S. 256.)

The term "relevancy of facts" is no doubt here used in the sense in which it is used in the Evidence Act. See S. 3 and Ss. 5—55 Act I, 1872.

It is no doubt useful, because it saves time, that the Judge should state to the jury in the narrative form so much of the facts as are admitted by both sides. But when he has reached this point, it is best that he explain distinctly the issues of fact that it remains for the jury to determine having regard to that part of the case which is admitted and to the charges upon which the prisoners are tried; and having made the jury understand these issues, the more convenient mode of summing up for him to adopt is to present to the jury as clearly and impartially as he can a summary of the evidence and the considerations and inferences to be drawn from the evidence as they bear both on the negative and affirmative sides of each of these issues. It is impossible, of

Ch. XXIII. — S. 298.

course, for any Judge to state every item of evidence, or to draw the attention of the jury to every fact which has been deposed to, but he can, without difficulty, give them a summary of the leading points of the evidence and the considerations and inferences to be drawn from it on the one side or the other.

He may, if he thinks fit, under the last clause of S. 298, at the same time, express to the jury his own opinion on the facts; but that is a very different thing from that which the Judge has done in this case. The Judge has not simply expressed his opinion and then left all the evidence fairly before the jury on the one side, and on the other, for them to judge of it by the aid of his opinion if they choose to avail themselves of it. But he has endeavoured from the first to last to persuade the jury to take a particular view of the facts and of the inferences from the evidence which he has himself taken and drawn, and indeed he has left them no loophole for taking any other view. That is not in accordance with the Code, but is a course calculated in the moffussil to withdraw altogether from the jury the actual decision of the case.—*Per* Phear, J. Rajcoomar Bose, 10 B. L. R., 36, *App.*

What a Judge says to a jury upon the law is an absolute and binding direction upon them. What he addresses to them on the facts are only such observations as he thinks it necessary and proper to make in assisting them to arrive at a conclusion upon the evidence which it is wholly in their province to deal with as they think proper, and the observations which a Judge would make to a jury upon the facts would be determined by circumstances which must vary, one might almost say, in every case and in every tribunal in the country. They would vary in a very great degree according to the intelligence of the jury whom the Judge was addressing; they would also vary very much according as the case had or had not been fully discussed both for and against the prisoners by Counsel previous to his addressing them. Had there been no discussion of a case by Counsel, it would undoubtedly be necessary for the Judge to point out many things which, after the case had been fully discussed on both sides, both for the Crown and the prisoner, might well seem to him unnecessary. And, on the other hand, a Judge has very often to caution a jury against accepting without careful consideration some of the suggestions that are made to them. When we are called upon to say whether or not a Judge has done his duty in addressing a jury on the facts, we must look to his summing-up as a whole, and see that the case has been fairly laid before them.—*Per* Markby, J., Nim Chand Mookerjee, 20 W. R., 42.

On the whole, the result appears to be that the Legislature has laid it down as a maxim or rule of evidence resting on human experience that an accomplice is unworthy of credit against an accused person, *i. e.*, so far as his testimony implicates an accused person, unless he is corroborated in material particulars in respect to that person; that it is the duty of the Court which in any particular case has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not; in other words, to consider whether the requisite corroboration is furnished by other evidence or facts proved in the case, though at the same time the Court may rightly, in exceptional cases, notwithstanding the maxim, and in the absence of this corroboration,

give credit to the accomplice's testimony against the accused, if it sees good reason for doing so upon grounds other than, so to speak, the personal corroboration.

Now, in the case of a trial by jury, it is the function of the jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable; and it is in all cases the duty of the Judge to point out to them that law (S. 298, Criminal Procedure Code). It was therefore, in the present case, the duty of the Judge to lay before the jury substantially to the effect just set out the principles relative to the reception of an accomplice's testimony, which the Legislature sanctioned by the Indian Evidence Act: and we think the Judge was wrong in telling the jury that this case was one in which no caution or instruction from him was needed on this head. It is in all cases, when an accomplice's testimony is admitted, incumbent on the Judge to inform the jury of the results of the law bearing on this point, substantially as we have just endeavoured to explain it —Sadhu Mundul, 21 W. R, 69.

In appeal, objection was taken that in summing up to the jury the Sessions Judge had omitted to notice the evidence for the defence. The High Court read that evidence and found that the prisoner had not been prejudiced by the omission, as, if it had been noticed, the Sessions Judge would have had to point out to the jury that the witnesses were not in accord with one another, that their statements were discrepant, and that the evidence of the principal witness was really unreliable. The High Court added "moreover we know that the prisoner was defended by Counsel and though particular points may not have been alluded to in the Judge's charge to the jury, we have little doubt that they were made, and properly made, much of by the prisoner's Counsel. It is not therefore to be assumed that these points were absent from the minds of the jury in considering their verdict. It is impossible for a Judge in summing up to go into every particular of the evidence. It is only necessary to direct the attention of the jury to the important and salient points in the case." Rochia Mahato, I L. R., 7 Cal., 42.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their mean-

ing is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustration.

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

(S. 257.)

But in a case of giving false evidence by making two contradictory statements, it is not necessary for the Jury to state which of the two statements is false, but it is sufficient for it to find whether the allegation made in the charge are proved.—Mahomed Homayoon Shah, 21 W. R., 72, FULL BENCH.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

(S. 263, para. 1.)

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

(S. 263, para. 1.)

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict although they are not unanimous.

(S. 263, para. 3.)

It is only when the jury are not unanimous that they may be required to retire for further consideration. If they are unanimous their verdict must be received.

The terms of S. 302 are sufficiently complied with, if the jury under S 238 returns a verdict of guilty of a minor offence forming part of one of the charges. Empress *v.* Mahaddi, 6 Cal. L. R., 349 (S C) I. L. R., 5 Cal., 871. Empress *v.* Harai Mriddha and another, W. R., 8 Cal., 189: See note to S. 237 *ante.*

In a trial for murder the jury gave the following verdict:—"We have no doubt that the prisoner killed Nudee Ghose; we think Nudee Ghose gave no provocation; but we do not think it murder, because the prisoner had no object in killing him." The Calcutta High Court held that this was clearly not such a verdict as could have been received, and that the jury were properly directed by the Sessions Judge to re-consider their verdict. The Court further refused to question the subsequent verdict of the jury convicting the prisoner of murder—Okhor Ghose, 1 W. R., 50. The same Court held that a Sessions Judge acted irregularly in directing the jury to re-consider their verdict, declaring certain prisoners guilty of theft, because he considered that from the evidence they were guilty of robbery. The Court ordered a fresh trial, remarking that the Jury were the sole Judges of the credibility of the evidence which would convert the theft into robbery, and, as they apparently disbelieved such evidence, their first verdict was proper, and should have been accepted.—Shakhawat Sheikh, 2 W. R., 13.

A jury convicted a prisoner on the second head of a charge, acquitting him on the first. The Sessions Judge required them to re-consider their verdict, after which the Jury convicted on the first head of the charge. The Calcutta High Court held that the Judge had no power thus to control the jury, since, having left the several charges to the jury, it must be presumed that he considered that there was evidence in support of each of those charges, and it was for the jury alone to convict or acquit on the several charges as they thought proper. The Sessions Judge should have recorded the first finding of the jury which was their verdict, and should have sentenced the prisoner accordingly—Joy Krishto Ghosamee, 7 W. R., 22.

Verdict to be given on each charge Judge may question jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

(S. 263, para. 2.)

It seems doubtful how far a Sessions Judge may put questions to the jury as to the reasons of the verdict delivered. In the case of Meahjan Sheikh, 20 W. R, 50, Couch, C. J., and Birch, J., ordered a Sessions Judge to be informed that he ought not to do so, but in the case of Udoy Chang, 20 W. R., 73, Macpherson, and Glover, JJ., remarked "the Judge never took the trouble to ascertain on what ground it was that the jury arrived at the verdict which they gave;" and in the case of Sustiram Mundul, 21 W. R., 1, Phear and Morris, JJ.,

Ch. XXIII — Ss. 304, 305.

made the following observations:—"It is only when it is necessary in order to ascertain what the verdict of the jury really is, that the Judge is justified in putting questions to the Jury. Unless a necessity of this kind truly exists, the questions are not justified in law. No doubt the Legislature thought that it would be very dangerous to give the Sessions Court the power of cross-examining the jury after they had delivered their final verdict, with a view to show that the conclusions at which they had arrived were not logical or inconsistent, or in order to provide materials upon which the Judge might be enabled afterwards to dispute the finality of the verdict. But in this instance it does appear from the answers which the foreman returned on being asked to give the verdict of the Jury on the first charge, that there was at the time some lurking uncertainty in the minds of the Jury themselves in regard to their verdict: and we think that this uncertainty in their minds made itself apparent to the judge, and that therefore, on the whole, that the questions which were put by him were rightly put within the discretion vested in him by S. 263. This being so, there was no verdict delivered, and there could have been no verdict formally recorded until the last of the questions was answered; and it is very clear that, upon the finding of facts which the answers of the jury taken together disclose, the verdict ought to have been a verdict of guilty on the first charge, namely, the charge of murder."

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

This section is new.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

(Act X 1875, Ss. 97, 98.)

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors, or of a majority of the jurors, he shall give judgment accordingly.

Verdict in Court of Session when to prevail.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

(S. 263, para. 4.)

If sentence of death is passed the proceedings shall be submitted to the High Court and sentence shall not be executed unless it is confirmed by such Court. S 374.

Because the Sessions Judge does not agree with the verdict of the Jury convicting the accused, is no valid reason for his passing a nominal sentence. By doing so he usurps the function of the Jury. Unless he thinks proper to refer the case under S. 307, it is the Judge's duty to pass a sentence adequate to the offence of which the prisoner has been convicted. Mad. H. Ct. Pro., Nov. 8, 1866; Weir, 201: 3 W. R., 16, C. L.

If the prisoner is acquitted no warrant of release or intimation to the Jail authorities is necessary. The prisoner is entitled to be discharged from custody immediately on judgment of acquittal being pronounced and there is no further charge pending against him; his further detention is illegal. It is for the Jail authorities in whose custody the prisoner was until the trial was concluded to satisfy themselves of the result of the trial and no formal warrant of release ordered by the Court to the Superintendent of the Jail is necessary. Mad. H. Ct. Pro. Oct. 30, 1869. Weir, *App.* 1.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Procedure where Sessions Judge disagrees with verdict.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may

Ch XXIII. S. 307.

exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

(S. 263, paras. 5, 6.)

The disagreement of the Sessions Judge must be such a complete disagreement as to lead the Judge to consider it necessary for the ends of justice to submit a case to the High Court not a mere expression of disagreement with the verdict coupled with his recording that it was not necessary to submit the case—Bhowani bin Panduji, I. L. R, 2 Bomb. 525. But when the Judge differs from the verdict of acquittal by a Jury and does not submit the case to the High Court, the Government has the right to appeal against the verdict. Hari Ghanu, I. L. R., 2 Bomb., 526 *note*.

In a case submitted to the High Court under S. 307, it is for the prosecutor on behalf of Government who asks for a conviction to begin and satisfy the Court that there is a case calling for an answer from the prisoner.—Ram Churn Ghose, 20 W. R., 33.

It should be noted that if the Sessions Judge submits a case in which the Jury have returned a verdict of acquittal he should state the offence which he considers to have been committed. See Sahae Rai, 2 Cal. I. L R., 304; (S. C.) I. L. R., 3 Cal., 623.

The powers given to the High Court by S. 307 are not to be lightly exercised, and the unanimous verdict of a Jury ought not to be set aside even if a Sessions Judge disagrees with it, unless that verdict is clearly and patently wrong and unsustainable on the evidence.—*Per* Phear and Morris, JJ., Huroo Manjhee, 21 W. R., 4. Similarly in the case of Ram Churn Ghose, 20 W. R, 33 (*per* Markby, J., Birch. J., concurring) :—The High Court will not interfere with the verdict of a Jury unless it be established in the clearest possible manner that they have wholly miscarried in their conclusions on the case. They are the constituted tribunal upon questions of fact, and it would be wholly destructive of that institution if the greatest possible confidence is not placed in them. See also Sham Bagdee, 20 W. R, 74 :—"The High Court ought not to interfere with the verdict of a Jury, unless it can say decidedly that it is clearly wrong. If the High Court is to interfere in every case of doubt, in any case in which it may with propriety be said that the evidence would have warranted a different verdict, then it must be held that real trial by Jury is absolutely at an end, and that the verdict of a Jury is of no more weight than the opinion of Assessors. If this were the intention of the Legislature, it would have said so. But the Legislature has not said so. The Court should exercise the powers vested in it by S. 307 only in cases in which it finds the verdict of the Jury clearly and undoubtedly wrong."

The Jury on being called on for their verdict, returned answer, that they found the charge proved by the evidence of the witnesses, but that, as there were no eye-witnesses, they could not convict the accused. The Sessions Judge then requested the Jury to state dis-

tinctly whether they found the accused to be guilty or not guilty, and the foreman said that they unanimously found the accused to be not guilty. The Sessions Judge, under S. 307, referred the case to the High Court, which, on perusing the evidence, held, that the charge of murder was completely established, and sentenced the prisoner to transportation for life. The High Court pointed out that the Judge might properly have explained to the Jury that the law does not require that a charge of murder should be proved by the testimony of one or more eye-witnesses, and that it was for them to determine without any reference to any such supposed rule, whether on the evidence before them there was any reasonable doubt of the prisoner being the person who caused the death of the deceased, and that if they had no such reasonable doubt, they were bound to give effect to the conclusion at which they had arrived in the first instance, that the charge was proved.—Gokool Kahar, 25 W. R, 36.

In the case of Khanderav Bajirav, I. L. R, 1 Bomb., 10 the Bombay High Court made the following remarks regarding S. 307, and their powers of interfering with the verdict of a Jury:—"It is a well recognized principle that the Courts in England will not set aside the verdict of a Jury, unless it be perverse and patently wrong, or may have been induced by an error of the Judge. We adhere generally to this principle, notwithstanding our large discretionary powers, first, on the constitutional ground of taking as little as possible out of the hands to which it has been primarily assigned by the Legislature, and, secondly, because any undue interference may tend to diminish the sense of responsibility. Burke, profoundly versed in the principle of the British Constitution, said of Juries; 'I will make no man or set of men, a complement of the constitution.' In this country, we must never let our acquiescence grow into a betrayal of justice. When Juries know that they are liable to the scrutiny and supervision of this Court they will feel the necessity of exercising conscientious deliberation in arriving at their verdict. The same check will prevent temptation to a wilfully wrong verdict from being held out to them. It is our duty in the present case to satisfy ourselves that the verdict of acquittal is proper, or at least sustainable, and if we find that it is not, the law enjoins on us to set it aside and pass the right judgment ourselves." The Court proceeded to find that the Judge had not charged the Jury as he should have done, and that being misled by his charge, the Jury had delivered a wrong verdict. The Court then said, "the acquittal is not to be set aside the less, because the Judge and the Jury have both committed a mistake. Taking this view we reverse the Jury's verdict." The prisoners were convicted of dacoity accompanied with grievous hurt, and sentenced.

When there is a patent and unquestionable failure of justice, it is necessary for the High Court to set aside the verdict of a Jury, but so long as trial by Jury exists, the verdict of a Jury must be accepted, and must stand unless it is manifestly and certainly wrong.—*Per* Macpherson and Morris, JJ., Wazir Mundul, 25 W. R., 25. See *contra* Mukhan Kumar, 1 Cal. L. R., 275 where the Calcutta High Court (Garth, C. J., Markby and Prinsep, JJ.), held that no fixed rules could be laid down for the exercise of the discretion of the High Court, but that the decision of each case must depend upon its own peculiar cir-

Ch. XXIII. — Ss. 308, 309.

cumstances and the majority (Garth, C. J., and Prinsep, J.), held that the case of Wazir Mundul, 25 W. R., 25, went too far.

It may be that another Jury would have come to a different conclusion on the evidence, but at the same time there are reasons for suspicion to warrant the Jury in disbelieving the witnesses in the present case and in giving the prisoner the benefit of the doubts raised by the inconsistences in the evidence. The High Court accordingly refused to interfere. *In re* Hurree Narain Mookerjea, 2 Cal. L. R, 518.

In the case of Tillukdharee, 2 Cal. L. R., 1, the Calcutta High Court (L. S. Jackson and Cunningham, JJ.), held on consideration of the evidence that there was no reason to discredit the evidence for the prosecution which was consistent with the probabilities of the case and accordingly in concurrence with the one Juror and the opinion of the Sessions Judge, and against the verdict of the majority of the Jury convicted the accused.

The Calcutta High Court requires (March 11th, 1863) that in all cases tried by Jury, Sessions Judges shall, in the periodical statements submitted by them, state whether such verdict has their concurrence, and whether, in their opinion, the evidence in the case warranted the particular finding. Cir. 5, Oct. 14, 1879. Wilkins, 25.

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be retried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

(Act X, 1875, S. 100.)

H.—Conclusion of Trial in Cases tried with Assessors.

Delivery of opinions of assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply, if any, are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Judgment.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

(S. 255, para. 1; Ss. 261, 262.)

S 309 enables the Court to sum up the evidence for the prosecution and defence in a case tried with assessors which was very doubtful under the former law. There is however no provision requiring that any statement of such summing up shall form portion of the record as in S. 367 with respect to trials by Jury.

The record of the opinion of each Assessor should appear at the commencement of the judgment of the Sessions Judge. It is not, in the High Court's opinion, sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven; what the High Court requires not only the result arrived at by each Assessor sitting on a Sessions trial, but, if possible, the reasons by which each Assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions. Cal. H. Ct. Cir. Pro., 4, June 23, 1865; Wilkins, 105. This is more particularly necessary when the Judge differs from the Assessors —Musst. Mina Naggerbhatun, 3 W. R., 6: Bushmo Aurut, 1 W. R., 21.

Ss. 366—373 provide for the form of a judgment, its delivery and other particulars. If the sentence of death is passed, the proceedings shall be submitted to the High Court and sentence shall not be executed unless it is confirmed by such Court. S. 374.

If the prisoner is acquitted no warrant of release or intimation to the Jail authorities is necessary. The prisoner is entitled to be discharged from custody immediately on judgment of acquittal being pronounced, and there is no further charge pending against him: his further detention is illegal. It is for the Jail authorities in whose custody the prisoner was until the trial was concluded to satisfy themselves of the result of the trial, and no formal warrant of release ordered by the Court of the Superintendent of the Jail is necessary.—Mad. H. Ct. Pro., Oct. 30, 1869. Weir, *App.* 1.

I.—Procedure in Case of Previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence commited after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

(New.)

S. 511 provides special means of proving a previous conviction.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Jurors' book.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Exemption of special jurors

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

(Act X of 1875, S. 39.)

Number of special jurors.

312. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

(Act X of 1875, S. 40.)

Lists of common and special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

(Act X 1875, Ss. 42, 43.)

Publication of lists, preliminary and revised.

314. Preliminary lists of persons liable to serve as common jurors, and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

(Act X 1875, S. 44.)

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such

number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

(Act X, 1875, S. 45.)

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

(Act X, 1875, S. 50.)

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Courts as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

(Act X, 1875, S. 51.)

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in de-

fault of payment of such fine, to imprisonment in the civil jail until the fine is paid.

(Act X of 1875, S. 461,)

If a trial is adjourned the jurors shall attend at the adjourned sittings, and at every subsequent sitting until the conclusion of the trial. S. 295.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

(S. 404.)

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely :—

(*a*) Officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the Preventive Service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in

Ch. XXIII. S. 321.

Court under the provisions of the Code of Civil Procedure, sections 640 and 641;

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

(S. 406.)

Pleaders and mookhtars do not hold any office under a Court of Session and are therefore not incapable of serving as Jurors or Assessors (7 W. R., C. L.), but it is inexpedient that their names should be included in the Collector's list of persons qualified to serve in those capacities, if a sufficient number of other persons is available.—Mad. Sud. Ct., April 28, 1862.

What under S. 405 of the Code of 1872 was an incapacity to serve as a Juror or Assessor has now been made the ground of a valid objection to a Juror (S. 278). All such persons are liable to serve as Jurors or Assessors unless so objected to, or unless in the exercise of their discretion the Sessions Judge and the Collector of the District or other officer appointed by the Local Government for this duty does not include them in the list prepared under S. 321.

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

(S. 400.)

In BENGAL the radius of the area of selection has been fixed at twenty miles in the Districts of Nuddea and Patna, and at fifteen miles in other districts.—Govt. Order, June 13, 1865.

In the District of Beerbhoom the area of selection for Jurors of European or American birth has been declared to be conterminous with the limits of that District.—*Cal. Gaz.*, 1873, p. 259.

In the PANJAB the area within which Assessors may be selected has been fixed at twenty-four miles from the place where trials before the Court of Session are held.—Govt. Not. 80, June 22, 1866.

In the Presidency of BOMBAY, a distance of twelve miles from the town has been fixed as the radius of the area of selection of Jurors and Assessors for trials held at Dharwar (*Gaz.*, 1873, p. 6); and of sixteen miles for trials held at Kaladgi (*Ibid*, p. 99).

In BRITISH BURMAH all Deputy Commissioners and the Magistrates of the towns of Akyab, Rangoon, and Moulmein, have been appointed to prepare lists of Jurors and Assessors.—*Gaz*, 1873, p. 7.

Publications of list

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

(S. 401, para. 1.)

Objection to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

(S. 401, para. 2.)

Revision of list

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

(S. 402.)

Annual revision of list

325. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

(S. 403.)

District Magistrate to summon jurors and assessors.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the Sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said Sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

(S. 407.)

See note preceding S. 271 *ante* for the rules for fixing periodical Sessions.

In the Punjab, any person summoned as an Assessor to a Court of Session may apply for payment of the expenses incurred by him on account of his attendance, and the Magistrate of the District shall, if the charges appear reasonable, order payment to be made; provided that the amount paid shall not exceed 3 rupees *per diem* If the journey is made otherwise than by rail, a distance of twelve miles shall be held to represent one day.—C. Ct. Cir. 15, July 24, 1873; Smyth, p. 134.

Power to summon another set of jurors or assessors

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or

assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

(S. 410.)

Form and service of summons.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

(S. 409, para. 1.)

When Government or Railway servant may be excused.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

(S. 411.)

Court may excuse attendance of juror or assessor.

330. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

(S. 412.)

List of jurors and assessors attending.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

(S. 413.)

Penalty for non-attendance of juror or assessor.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended de-

parts without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

(S. 414.)

A similar provision is made by S. 308 for the non-attendance or absence of a juror in trials before a High Court.

If a trial is adjourned the Jurors or Assessors shall attend at the adjourned sitting, and at any subsequent sitting until the conclusion of the trial. S. 295.

L.—Special Provisions for High Courts.

Power of Advocate General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

(Act X 1875, S. 146.)

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

(Act X, 1875, S. 4.)

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

Place of holding sittings.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Notice of sittings.

(Act X 1875, S. 5.)

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

Place of trial of European British subjects.

or direct that they shall be tried at a particular place named.

(Act X 1875, S. 27.)

CHAPTER XXIV.

General Provisions as to Inquiries and Trials.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence,

Tender of pardon to accomplice.

Ch. XXIV. S. 337.

or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and, examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

(S. 347.)

No Magistrate of less powers than of the first class can tender a pardon except with the sanction of the District Magistrate, (probably after a report made of the circumstances of the case) and as a tender can only be made in a case triable exclusively by a Court of Session such Magistrate would be only one who could commit to that Court, *viz*, a Presidency Magistrate, District Magistrate, Subdivisional Magistrate, Magistrate of the first class and any Magistrate specially empowered on that behalf by the Local Government. In such a case the sanction of the District Magistrate on which the Subordinate Magistrate has proceeded should be in writing and appear on the record.

If any Magistrate not empowered by law on that behalf erroneously in good faith (*i. e.* acting with due care and attention) tenders a pardon his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*g*).

The last portion of S. 337 apparently refers to a case in which a charge of an offence triable exclusively by a Court of Session or one which on the report of the investigation by the Police appears to be regarding such an offence and on this *primâ facie* complexion of the case a tender of pardon was made to one of the accused and accepted, but in the course of the inquiry the evidence has satisfied the Magistrate that a lesser offence triable by him had only been committed :—for instance, a charge on a Police report of murder was before a Magistrate who thereupon tendered a conditional pardon and examined the person who accepted it, but in the course of the inquiry the lesser offence of voluntarily

causing grievous hurt or hurt was only established, the evidence under conditional pardon would still be legal evidence, but the Magistrate who had taken it would be unable to try the case himself. There would apparently be no objection to his committing to the Court of Session on a charge of an offence triable by a Magistrate or the Court of Session. The incapacity would also extend to cases of offences triable exclusively by a Court of Session which the District Magistrate who had tendered a conditional pardon might otherwise be able to try under special powers conferred by S. 30.

A Magistrate is not competent to convert an accused person into a witness except when pardon has been lawfully tendered to, and accepted by him under S. 337. Evidence given by such a person who had accepted the offer of pardon in the case of an offence not triable exclusively by the Court of Session was held not to be relevant as that person had not been discharged, acquitted or convicted. Hanmanta Madhaji Khadki, I. L. R., 1 Bomb., 610; see also Asgur Ali, I. L. R., 2 All., 260.

It is not illegal to take the evidence of a person who has been suspected, but discharged by the Magistrate for want of evidence. He may, notwithstanding, be admitted as a witness for the prosecution. It is not indispensable that he should have been acquitted. He could not have been acquitted, as he was never committed for trial; and he could not be pardoned, as he would probably reject the offer if made.—Behary Lall Bose, 7 W. R, 44.

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.—S. 133, Act I, 1872 (Evidence Act). But S. 164 of the same Act runs thus:—

'The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.' The following appears as an illustration (*b*) to this section. 'The Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.'

It has consequently been the universal practice of our Courts to require some corroboration, it being considered unsafe to convict on the sole evidence of an accomplice. The rule for charging a Jury has been thus laid down by the Madras High Court (March 20, 1868). They should be told (1) that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; (2) that as a general rule of practice it is considered unsafe to convict on such evidence; and (3) the Judge should point out such circumstances, if any, in the particular case which afford sufficient reason for relying on such evidence.

The evidence should not be left to a Jury without such directions and observations from the Judge as the circumstances of the case may require.

If a Judge in a criminal trial were to tell the Jury that in his opinion the evidence was sufficient to justify them in finding the prisoner guilty, in a case in which, if the Judge had been trying the case with assessors, the High Court would on appeal have reversed his judgment

Ch. XXIV. — S. 337.

if upon the same evidence he had convicted the prisoner, then no doubt the Court ought on appeal to set aside a verdict of guilty found by the Jury notwithstanding the advice was merely as to the weight of evidence.

So, if a Judge, instead of advising a Jury not to convict upon the mere uncorroborated evidence of an accomplice, were to advise them to convict upon such evidence, or were to tell them that the uncorroborated evidence of an accomplice given under a tender of pardon was admissible, and that it was for them alone to form their opinion upon it, that a conviction provided upon such evidence would be legal, and that such evidence without corroboration might be acted upon with as much safety as that of any other witness, I think the error in the direction would form a good ground of appeal. Elahee Bukhsh, 5 W. R., 80: (S. C.) B. L. R. Sup. Vol. F. B. 459. *Per* Peacock, C. J. (Kemp and Phear, JJ. concurring). In the case of Sadhu Mundul, 20 W. R., 69 it was held that in all cases where an accomplice's testimony is admitted it is incumbent on the Judge to inform the Jury of the results of the law bearing on this point as laid down in S. 114 Ill. (*b*) and S. 133, Evidence Act as well as in the case of Elahee Bukhsh just quoted.

It is not sufficient simply to tell a Jury to consider whether the evidence of an accomplice was strongly corroborated as to the prisoners, as that would be to ask them to consider a question which, it is certain, no native Jury in the mofussil would understand. It is the duty of the Judge to go through the history of the crime as related by the accomplice, to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at or cognizant of, the murder. If such facts are proved, they would corroborate the story of the accomplice. But it would not be enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story. If the state of facts proved *is equally consistent with*, and capable of receiving, a reasonable and natural explanation on the hypothesis of the prisoner's innocence, *those facts, standing alone, would be no evidence of the truth*, of the accomplice's story.—Karoo and others, 6 W. R., 44; see also Bykunto Nath Banerjea, 10 W. R., 17.

The Jury, in cases tried by Jury, or the Court, in cases tried with the aid of Assessors, may no doubt presume that an accomplice is unworthy of credit unless corroborated (S. 114 Ill. 6) but before acting on that presumption the Jury or Court is required by S. 114 and the sequel to the Illustrations to take into consideration certain facts with the view to ascertain the probability of the story told, and the rule is thus brought to coincide with the rule observed in England that though the tainted evidence of an accomplice should be carefully scanned and received with caution and may be treated as unworthy of credit, yet, if the Jury in the one case, or the Court in the other, credits the evidence, the conviction is not illegal. *In re* Ramasami Padayachi, I. L. R., 1 Mad., 394.

As regards the amount of corroboration required to support the evidence of approvers, Norman, J., remarked:—"It is sufficient if the evidence is confirmatory of *some of the leading circumstances* of the story of the approvers as against the particular prisoner, so that the Court may be able to presume that they have told the truth as to the

rest. The true rule on the subject of the corroboration of the evidence of approvers probably is, that if the Court is satisfied that the witness is speaking the truth in some material part of his testimony, in which it is seen that he is confirmed by unimpeachable evidence, there may be just ground for believing that he also speaks truth in other parts as to which there may be no confirmation."—Kalachand Dass, 11 W. R., 21.

There should be corroboration such as adds to the approver's evidence against the particular prisoner, and this is not complied with when there is no evidence apart from that of the accomplice which identifies the prisoner with the commission of the offence with which he is charged; nothing which distinctly goes to prove that he was in any way connected with the commission of the principal offences. Facts which do not show the connection of the prisoner with the commission of the offence with which he is charged are no corroboration in the sense in which the word is used in such cases, although they may tend to show that certain portions of what the accomplice says are true. Nowab Jan, 8 W. R., 19 (see p. 25) per Macpherson, J.

So in the case of Baikoontonath Banerjea, 3 B. L. R., 3, F. B. *Foot-note*, it was laid down that before the evidence of an accomplice can be safely depended upon, so far as it affects the prisoner it ought to be corroborated—that is, that other evidence from sources independent of the approver, should be forthcoming relative to facts which implicate the prisoner in the same way as the story of the approver does. See also Mohesh Biswas, 19 W. R., 16.

S. 30 of the Evidence Act enables a Court to take into consideration a confession made by an accused person affecting himself and another person jointly tried with him for the same offence as against the other person as well as against himself. See note to S. 30, Evidence Act, *Appendix*. Such a confession is, however, no proper legal corroboration of the evidence of an accomplice. Malapa bin Kapana and others, 11 Bomb., 196; Jaffer Ali, 19 W. R., 57, &c. &c.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

(S. 348.)

If any Magistrate not being empowered by law in that behalf erroneously in good faith tenders a pardon under S. 338 his proceeding shall not be set aside merely on the ground of his not being so empowered. S. 529 (*g*).

Commitment of person to whom pardon has been tendered.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

(S. 349.)

The law is silent regarding the Court by whose order the person who has not complied with the conditions of the pardon may be tried, as well as regarding the time at which such order may be made. The corresponding section (S. 349) of the Code of 1872 declared that such order could be passed by "the Magistrate before the trial, or the Court of Session before judgment had been passed or the High Court as a Court of Reference or Revison." Subsequent enquiries, or an accident might no doubt show that the evidence of an approver on which the conviction of an alleged accomplice might have mainly depended was altogether false with respect to the particular person and his pardon might then be reasonably withdrawn, his trial being ordered, but an injudicious use of such a power on the part of a Magistrate might lead to serious consequences.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

(S. 186, paras. 1 and 2.)

"Pleader" with reference to any proceeding in any Court means a Pleader authorized by any law for the time being in force (Act XVIII, 1879) to practise in such Court and includes (1) an advocate, a vakil and an attorney of the High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding. S. 4 (*n*).

The Court Fees' Act (VII of 1870), Sch. II, Art. 10, requires that every mukhtarnama or vakalutnama, when presented for the conduct of any one case to any Criminal Court other than a High Court, or to

a Magistrate, shall bear a stamp fee of eight annas, and if presented to the High Court, two rupees. The terms of S. 340 do not warrant any general rule for the exclusion of mukhtars in all cases, but only allow a discretion in each case as it arises. Magistrates are expected not to deprive parties of legal aid, which they can obtain at a moderate cost by the indiscriminate exclusion of persons who are invested by law with a distinct professional *status* in criminal trials.—Cal. H. Cal. Cir., 13, May 29, 1870.

The Madras High Court has held that when an advocate or attorney of the High Court or authorised pleader (including a moonsiff's pleader) appears in defence of an accused person under S 340, no vakalutnama is necessary.—7 Mad xl, *App.*, Pro. Nov. 23, 1874. Weir, 172: Pro. Murch 28, 1879; Weir 174.

With the permission of the presiding Judge, any advocate or pleader may address the Court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleader consents.—Cal. H. Ct. Cir. 4, March 15, 1869; 2 B. L R, 6, *Rules, &c.*; 4 All. Mis. 1, Cir. 1, 1868.

The practice of admitting private vakils to defend parties in Criminal Courts is not illegal, but it is within the discretion of the Magistrate to hear such agents or not.—Mad. H. Ct. Pro. Nov. 4, 1874; 7 Mad. xxxvii, *App.*

No party has the right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader. S. 440.

S. 495 provides for the conduct of a prosecution by empowering any Magistrate inquiring into, or trying any case to permit any person other than an officer of Police below the rank of Police Inspector to conduct the prosecution: but no person other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without permission. Any person conducting the prosecution may do so personally or by a pleader.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass there on such order as it thinks fit.

(S. 186, para. 3.)

Ch. XXIV.

Ss. 341,342.

When the accused person is from unsoundness of mind incapable of understanding the proceedings, the Court if that of Magistrate should proceed under S. 464, and if a Court of Session or High Court under S. 465.

The following judgments have been delivered on S. 341 :—

"The accused is, as the Deputy Magistrate states, both deaf and dumb, and 'is unable to understand the proceedings in the case' The Magistrate, however, says that he is satisfied from the man's demeanour and action that he did understand what he was charged with, *viz*, house-breaking, and that he, being a very old offender in this particular, ought to have been dealt with under S. 75, Penal Code, and have been committed to the Sessions.

"I presume that the Magistrate's finding, as to the accused's being able to understand the nature of the proceedings brought against him, must be taken as conclusive, the Deputy Magistrate's statement notwithstanding, and that S. 341, Code of Criminal Procedure, will not apply.

"If that be so, the matter would come under the provisions of S. 348, Code of Criminal Procedure, for the accused is stated by the Magistrate to have been no less than seven times previously convicted of an offence under Chapter XVII, Penal Code, punishable with three years' rigorous imprisonment, and he should ordinarily have been committed to the Sessions, there being no question as to the extent of the Magistrate's powers under S. 34 of the Code.

"Under S. 439, Code of Criminal Procedure, this Court can act as a Court of Revision and under this section it appears to me that the order of the Deputy Magistrate convicting the accused should be quashed, and the Deputy Magistrate be directed to commit the prisoner for trial to the Sessions Court."—Dobree Halwareo, Cal. H. Ct., Feb. 20, 1873.

In the case of Bowka Hari (22 W. R., 35) several persons were tried and convicted by the Court of Session for committing house-breaking, one of whom alone was deaf and dumb and unable to understand the proceedings or to plead to the charge. The High Court held that on the facts established by the evidence, there could be no doubt that this man was guilty of the offence charged, but the case was returned to the Magistrate to obtain some means of communicating with the deaf and dumb prisoner through his relations or associates for the purpose of conveying notice to him that he was given a further opportunity of being heard in the matter. The termination of this case is reported in 22 W. R., 72, when the prisoner was convicted and sentenced.

See also the case of Nodur Chand Kamte, 22 W. R., 35, in which the High Court directed the accused, a deaf and dumb person to be admonished and discharged as not being a person to whom penal discipline could be properly applied.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such ques-

tions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

(Ss. 193, 250, 342, 343, 345.)

The examination of the accused is for the purpose of enabling the accused to explain any circumstances appearing in evidence against him, (Hosein Buksh, 6 Cal L. R. 521), and would consequently not be a general examination on whatever might suggest itself to the Court as under the Code of 1872. An examination during the course of an inquiry or trial is optional with the Court as may be considered necessary, but at the close of the evidence for the prosecution and before his defence is taken, the Court *shall* for the same purpose, question the accused generally on the case on points on which it requires some explanation from him. The examination should be recorded according to S. 364 unless it is taken by a High Court established by Royal Charter, or the Chief Court, Punjab or in a summary trial.

The following observations of the Calcutta High Court (*per* Kemp and E. Jackson, JJ.) in the case of Krishto Dhoba (14 W. R., 16) deserve especial attention in connection with S. 342, and are altogether in accordance with the Circular of the same Court, which follows:

"I have for some time felt from examination of criminal trials, that many Magistrates are too hasty in making commitments, or rather that they do not make the thorough inquiry which, I think, they ought to make previous to commitment. In a case of murder more especially, there can be no doubt that it is the duty of the Magistrate to sift every fact bearing on the case, in order to ascertain whether the accused is guilty or innocent, and to examine the accused on the facts which bear against him. One of the points of the evidence in this case which led to presumption of the accused's guilt, was, that he had been absent about the time the murder was committed. His statement as to where he was at that time should have been recorded, and should also have been thoroughly enquired into. It is not sufficient to say that the accused might bring witnesses to prove his innocence at the trial. It is possible the accused may not know the names of the witnesses; and if the witnesses can give evidence in his favor to exculpate him, he

Ch. XXIV. — S. 342.

should not be committed. A long time elapses before a trial at the Sessions comes on, and witnesses cannot then give as clear evidence, more especially as to time and duty, as when the facts have only lately occurred. I think every inquiry should have been made previous to commitment, to ascertain not only whether there was presumption of the guilt of the accused, but also whether he was innocent. It is the duty of the Police and the Magistrate not to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. There is a clause in the Procedure Code which empowers Magistrates to commit without inquiry into the defence of the accused. I believe the discretion given by this clause is much abused. It may be applied in certain cases, but in serious charges of murder, when the life of the accused is at stake, I think this clause should not be acted upon, because no certainty of the accused's guilt can arise until his defence is negatived, and proof that his defence is false is frequently very strong evidence in favor of the prosecution. If the result of the inquiry into the defence leaves the matter in doubt, it is duty of the Magistrate to commit and leave the Sessions Court to decide which, is the true story."

The following are the terms of a Circular, 13, 1864, issued by the Calcutta High Court to the Magistrates subordinate to it:

"Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person at any stage of the inquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the inquiry. In those few and exceptional cases in which the guilt of an accused may be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as it is discretionary with a Magistrate to discharge or to commit an accused person, according as he finds that the evidence is, in his opinion, sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give, when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation, it being clearly explained to the accused that it is at his option to answer such questions or not. The Court, however, desire to explain that, in issuing these directions, they in no way sanction any proceedings of an inquisitorial nature."

It is entirely discretional with the Magistrate whether he should examine an accused person, and it is very undesirable that he should do so when he is satisfied that the evidence for the prosecution does not disclose any proper subject of criminal charge against him.—Shama Sunkar Biswas and another, 1 B. L R, 16, *Short Notes;* (S. C.) 10 W. R., 25.

So also the Madras High Court, in the case of Virabudra Gaud (1 Mad., 199), remarked, that the discretion given by law for questioning a prisoner has not been allowed for the purpose of driving him to make statements criminatory of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts in

evidence appearing against him, so that these facts should not stand against him unexplained. Questions must not, therefore, be put to the prisoner in the middle of the case for the prosecution, so as to supplement it when it is defective.—Diaz, 3 Bomb., 51, *Crown Cases.* See also Chineebash Ghose, I Cal. L. R , 436.

It is not the object of the law to force an accused to convict himself by making some criminatory admissions after a series of searching questions in a case in examination; Hosein Bukhsh, 6 Cal. L. R., 521; nor to cross-examine him with the apparent object of convicting him out of his own mouth of false statements, and so make him prejudice himself in respect of the matter with which he is charged. Behari Lall Bose, 6 Cal. L R., 431.

The Calcutta High Court (Cir. 19, Sept 17, 1864) has ordered that the examination of an accused shall contain his or her name, that of his or her father, and if a married woman, that of her husband, the religion, caste, profession, and age of the accused person and the village or pergunna in which he or she resides. Also Bomb. H. Ct., Dec. 27, 1872, *Gaz.*, 1873, p. 20.

The examination should not be recorded until a complaint has been made. A criminal trial cannot properly be commenced by such examination (Cal. H. Ct., 627, 1863), but an admission of crime, fairly made, and after due warning, is not inadmissible, because at the time it was made no formal accusation had been made against the party making it.—Ramchurn Chamar and others, 4 W. R., 10.

The Court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him. Evidence Act (I of 1872) S. 114, Ill. (*h*).

When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes it. S. 30, Evidence Act, (I, 1872). The rulings on this section are collected in a note to it in the Appendix, the substance being that a confession made by one person can be used against another person only when it is sufficient of itself to criminate the person making it of the offence of which they are jointly tried.

In a case regarding an offence triable exclusively by the Court of Session certain Magistrates, during the inquiry, and, at any time after commitment but before judgment is pronounced, the Court to which commitment is made, may tender a conditional pardon to any one supposed to have been directly or indirectly concerned in any such offence. Ss. 337, 338.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Ch. XXIV. — S. 344.

With this section, Ss. 24, 28, and 29 of the Evidence Act, (I of 1872) should be read.

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by an inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient in the opinion of the Court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. S. 24.

If such confession is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant. S. 28.

If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him. S. 29.

Power to postpone or adjourn proceedings.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

(S. 194, para. 1, *Expl.*; S. 208, para. 1; Ss. 219, 264.)

It is not competent to a Magistrate to remand an accused against whom no evidence has been recorded.—Zuhuruddeen Hossein, 25 W. R., 8.

An order for remand should be passed in the presence of the accused persons.—Mad. H. Ct. Pro., June 10, 1867. Weir, 178.

There is nothing illegal in a verbal order passed by a Magistrate directing the accused person to appear on the day to which the trial may have been adjourned. A conviction under S. 174, Penal Code, for non-attendance on such verbal order was affirmed.—5 Mad., xv., *App.*, Pro., Jan. 18, 1870.

An accused person may be bound over to appear daily before a Magistrate until the close of the trial. No notice is necessary before proceeding to enforce the penalty of the recognizance.—6 Mad., xxxviii, *App.*, Pro Nov. 17, 1871.

Whenever, from any cause, a Magistrate is unable to complete an inquiry himself, any other Magistrate having jurisdiction may complete the case, and proceed as if he had recorded all the evidence himself.—S. 350.

When the proceedings have been completed against an accused person, the decision of the case or his commitment to the Court of Session should not be deferred, merely because the principal offenders have not been apprehended.—3 W. R., 21, C. L.

The observations of the Calcutta High Court (*per* Couch, C. J., Ainslie, J., concurring) in the case of Mathoora Nath Chuckerbutty (17 W. R., 55; 9 B. L. R., 354) are very important in connection with this section—

"If there is not a proper cause—a cause such as is described in S. 344—a Magistrate has not power to adourn an inquiry. It is not lawful for him to do it. A Magistrate is not at liberty arbitrarily or for any reason which he may think sufficient to adjourn the inquiry. It is only to be in the cases mentioned, and although an improper adjournment of the inquiry by a Magistrate on a ground which could not be said to show that it was either necessary or advisable to do so, might scarcely be said to be an error in the discretion upon a point of law or to involve any question of law, and S 404 of the Code of Criminal Procedure of 1861, might possibly not enable the High Court to interfere, we have by S. 15 of the Act, under which this Court is established, a power of superior evidence which enables us to deal with such a case. There was not the absence of a witness or other reasonable cause which made it necessary or advisable to adjourn the inquiry. The witness, whose absence appears to have been given as a reason for the adjournment, was the Inspector who made the report. Assuming that if called he would have deposed to the facts stated in that report, it appears that all that he would have proved would have been that the will was produced to him and was afterwards returned, and that evidence being taken there really would have been no evidence to justify the detention of the parties upon a charge of forgery of the will. It would really have been just the same as if there had been no evidence whatever against them. The case appears to have been postponed in a manner which could hardly be justified. There was not any evidence taken which could be made the foundation of a charge, and the Magistrate appears to have been influenced in the course which he took by the expectation that after some time and by dint of inquiry some evidence might be obtained. But a Magistrate is not justified in keeping parties under recognizances in the way he did on this occasion."

Where three witnesses for the defence were summoned, and one only appeared, the other two being reported absent from their homes, and the case was therefore decided, the conviction was set aside, and the Magistrate was directed to re-hear the case after giving to the accused person a reasonable time to obtain the attendance of the absent witnesses.—5 Mad. xxvii *App.*; Pro. July 5, 1870.

In any case in which a commission has been issued for the examination of any witness, the inquiry, trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. S. 508. In some cases it may so happen that an adjournment of more than the fifteen days allowed in S. 344 may be necessary.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour.....	374	The person compelled to labour.
Mischief, when the loss or damage caused is loss or damage to a private person.....	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Criminal Breach of Contract of service	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman	498	
Defamation	500	The person defamed.
Printing or engraving matter knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

Ch. XXIV.
S. 346.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

(S. 188.)

In a summons case if the complainant, at any time before the final order is passed, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused. S. 248.

S. 214, Penal Code, declares that whoever gives or causes or offers to agree to give or cause any gratification to any person or to restore or cause the restoration of any property to any person in consideration of that person's concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment shall be liable to certain degrees of punishment according to the offence and S. 213 has made punishable in the same way the accepting or attempting to obtain or agreeing to accept any gratification for himself or any other person or any restitution of property to himself or any other person in consideration of the object above specified concealed &c., but Act VIII of 1882, S. 6, has added an *Exception* that the provisions of Ss. 213, 214 do not extend to any case in which the offence may be lawfully compounded.

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

(S. 45, paras. 1, 2.)

This would be necessary if in the course of proceedings before a Magistrate not of the first class a Justice of the Peace and an European British, it should transpire that the accused was an European British subject, when the proceedings should be stayed and the case submitted with a brief report explaining its nature to a Magistrate competent to deal with it. Compare S. 445. So also when the offence committed is apparently one which the particular Magistrate is not competent to try; or one in which it appears he is in some way personally interested (S. 555) or which he is declared to be otherwise incompetent to deal with. Ss. 482, 487.

Procedure when after commencement of inquiry or trial Magistrate finds case should be committed.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

(S. 46, para. 3; Ss. 221, 436, para. 3.)

"Before signing judgment." The judgment shall be dated and signed by the presiding officer of the Court at the time of pronouncing it in open Court at the conclusion of the trial either immediately or at some subsequent time of which due notice shall be given to the parties or their pleader. Ss 367, 366.

If the subordinate Magistrate be empowered to make commitments to the Court of Session, and the offence be triable by the Magistrate of the District or the Court of Session, he should refer the case to the Magistrate of the District rather than hold a preliminary inquiry, and commit it to the Court of Session, since this latter procedure, though strictly legal, should, as much as possible, be avoided, as it tends unnecessarily to occupy the more valuable time of the Sessions Judge.—2 W. R, 19 C. L.

In cases triable by a Magistrate or by the Court of Session, the accused person should be committed for trial only when the Magistrate finds, from aggravating circumstances, that a higher punishment is required than he can award.—Cal. H. Ct., Cir. 5, 1865.

Where death appears to have resulted from injuries inflicted by the party accused, a Magistrate ought to be very careful and not take it on himself to absolve the accused of the graver charge of culpable homicide or murder, and convict only of hurt or grievous hurt, unless it is quite clear there is no sufficient evidence to warrant a commitment to the Sessions Court on such charge.—Cal. H. Ct., Cir. 9, Sept 6, 1869.

When several persons are charged with offences of various degrees, arising out of one act or transaction, all implicated therein, against

Ch. XXIV. — S. 348.

whom sufficient evidence is forthcoming, should be committed to the Court of Session, if an offence beyond the cognizance of a Magistrate, or one, which, in the opinion of the Magistrate having jurisdiction in the case, ought to be tried by a Court of Session, be chargeable against *any* of the accused.—Agra Sud. Ct., Cir. 64, 1862; also Cal. H. Ct. Cir., May 19, 1862.

Where the evidence showed that an offence beyond the jurisdiction of the Magistrate had been committed, the Calcutta High Court set aside the conviction for a lesser offence, remarking that Magistrates are not at liberty to pass over material parts of the evidence in cases before them, and so to withdraw cases from the cognizance of the proper tribunal.—Ramtahal Singh, 5 W. R., 65.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

(S. 315.)

Chapter XII of the Indian Penal Code refers to offences relating to coins and Government Stamps, and Chapter XVII to offences against property. It should be noted that the offender need not have been punished with imprisonment for three years and upwards, but the offence for which he was convicted must have been so punishable.

S. 75, Penal Code, provides that an enhanced sentence may be passed on a second conviction as above specified, but the offender should not be committed for trial unless the Magistrate considers him to be an habitual offender. Much necessarily depends upon the nature of the previous conviction or convictions as well as of the offence then before the Magistrate, and also the interval between the date of the expiry of the last sentence and the commission of that offence.

If it is intended to prove the previous convictions for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement be omitted, the Court may add it at any time before sentence is passed, S. 221, last para. Ss 310 provides a special procedure for the trial of such charges in the High Court or Court of Session and S. 511 provides a special means of proving a previous conviction.

Although the accused may have been convicted several times of the offences specified in S. 348, as the Magistrate who tried and convicted had some jurisdiction to decide the case, the Bombay High Court refused to order a new trial, for it could not say that the Magistrate had no jurisdiction.—Annaji Krishna, April 24, 1873. Unless the previous convictions be specified in the charge as required by S. 221, they cannot be used for the purpose of enhancing the sentence—*Ibid;* Rajcoomar Bose, 12 W. R., 41; see also Eshan Chunder Dey, 21 W. R., 40, in which the case was re-opened, and the Sessions Judge was directed to take evidence and record the verdict of the jury on such a charge.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion after hearing the evidence for the prosecution and the accused that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law; provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

(S. 46, paras. 1, 2.)

If the subordinate Magistrate be empowered to commit to the Court of Session, and the offence be triable by the Magistrate of the District or the Court of Session, he should refer the case to the Magistrate of the District rather than hold a preliminary inquiry, and commit it to the Court of Session, since this latter procedure, though strictly legal, should, as much as possible, be avoided as it tends unnecessarily to occupy the more valuable time of the Sessions Judge—2 W. R., 19, C. L.

The Magistrate to whom a case is referred under S. 349 cannot transfer it to another Magistrate but must dispose of it himself. 5 Mad. *App.* xliii. Pro. Nov. 8, 1870. Weir, 143. He cannot return the case to the referring Magistrate on the ground that in his opinion

Ch XXIV the latter has power to pass an adequate sentence. Dula Fakir, 6 Cal. L. R, 276.

S 350. In amending the Code of 1872, Act XI of 1874, S. 7 gave the following illustration as part of S. 46 of that Code, and this is now embodied in S. 349 of this Code in the words "punishment different in kind from or more severe than that which such Magistrate is empowered to inflict:"—

Illustration. A Magistrate of the third class having jurisdiction finds an accused person guilty, but considers that he ought to receive a more severe punishment than imprisonment for a term of one month, or a fine of fifty rupees. On recording the finding, submitting the proceedings and forwarding the accused to the Magistrate of the District, such Magistrate may pass a sentence on the accused including solitary confinement and whipping.—S. 7, Act XI, 1874.

"And shall pass such judgment, sentence or order." By the use of the word order, provision is expressly made for the disposal of the case otherwise than by conviction or acquittal. It is competent to a Magistrate to whom a case has been so referred to say that, either from the gravity of the matter or from some other sufficient reason the Sessions Court is the proper tribunal for the disposal of the case and to make an order in accordance with that opinion. Mad. H. Ct. Pro. Aug. 21, 1876; Weir 164.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

(Ss. 328, 329.)

Inquiry includes every inquiry under this Code conducted by a Magistrate or Court, S. 4 (c)—so that the application of S. 350 would not be limited to inquiries preliminary to commitment but to inquiries in miscellaneous matters under Part IV, Chapters VIII, X, XI, XII, that is, cases regarding security to keep the peace or for good behaviour, public nuisances and disputes regarding immoveable property likely to cause a breach of the peace, as well as a preliminary inquiry under S. 476 before sending the case for inquiry or trial by the nearest Magistrate of the first class. When the second Magistrate continues and completes an inquiry on proceedings taken by his predecessor in office, it would seem that the High Court alone can order a new inquiry to be held even though such inquiry may have terminated in a commitment to the Court of Session. S. 215 declares that a commitment made by a competent Magistrate can be quashed by the High Court only, and only on a point of law, and S. 537 provides that no order by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII, (on submission of the proceedings for confirmation of the sentence passed) or on appeal or revision on account of any error, omission or irregularity in the proceedings before trial or in any inquiry or other proceedings under this Code unless such error, omission or irregularity has occasioned a failure of justice. Where a commitment has been made by a Magistrate purporting to exercise powers duly conferred which were not so conferred, a Court of Session to which the commitment has been made may under certain specified circumstances direct a fresh inquiry by a competent Magistrate, S. 522, and except in any of the cases coming under S. 522 it would seem that a Court of Session must proceed to try on a commitment made to it or refer the matter for the orders of the High Court.

Detention of offenders attending Court.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

(S. 104.)

S 65 empowers every Magistrate at any time to arrest or direct the arrest, in his presence, within the local limits of this jurisdiction, of

Ch. XXIV. — any person for whose arrest he is competent at the time or in the circumstances to issue a warrant.

S 352 — The action of a Court of Session would be restricted by S 193 as it cannot ordinarily take cognizance of any offence as a Court of original jurisdiction unless the accused person has been committed by a Magistrate duly empowered in that at all.

Ch XXV. — Ss 353,354.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(S. 187.)

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

(S. 191, para. 1.)

Manner of recording evidence outside Presidency-towns.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

(S. 332.)

For the orders of the Calcutta High Court regarding the examination of witnesses see note to S. 208 and Wilkins, 76—79.

Record in summons cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

(Ss. 222, 333.)

Chapter X, Ss. 135—166 of the Indian Evidence Act (I, 1872) prescribe the manner in which the examination of witnesses should be conducted.

Ordinarily, in the cases provided for by S. 355, the record of the evidence consists merely of a memorandum taken by the Magistrate of the substance of the evidence of each witness. A Magistrate is bound to "make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds;" this is not complied with by a mere statement that a witness deposes the same as the last.—Agra Sudder Court Cir. 18, 1865; Byha Wullud Soorjim, 1 Bomb., 91. The practice of preparing the memorandum of evidence from the recorded depositions of the witnesses after their examination is illegal.—Agra Sudder Court Cir. 13, 1866. Want of time cannot be accepted as a valid course for not recording a memorandum of the evidence.—Smyth, p. 119. The Calcutta High Court (Cir., 30th March, 1864) has ordered that, when it may appear to a Magistrate that a witness is giving false evidence, so that criminal proceedings are likely to be necessary, the Magistrate should take down at length the evidence of the particular witness. A full record of the evidence in the vernacular is not necessary in order to a conviction for giving false evidence; but this precaution will serve to obviate any doubts regarding the accuracy of the Magistrate's brief note of the evidence, where the commitment rests wholly or mainly on that note.

Evidence of witnesses should, in all cases, be recorded in printed or lithographed forms; and care should be taken that the headings are carefully and accurately filled up. No more than one deposition should be written on each sheet.—Cal. H. Ct. Cir. 4, Aug. 10, 1872.

Ch. XXV.

S. 356.

The following heading to depositions of witnesses has been issued for use in the Criminal Courts in Bombay :—

I, A. B., having made solemn affirmation or (oath as the case may be) state :

I am by religion (or caste when the party is a Hindoo) a
My age is about (If the witness cannot tell his age the Magistrate should state how old he appears to be.)
My occupation is that of a
My residence is in the village of
(Here follows deposition)
Cross-examined by the accused.
I, &c. (or the accused decline to cross-examine).
Re-examined by the Court.

Dated this day of

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented

from making a memorandum as above required, he shall record the reason of his inability to make it.

(S. 334.)

Evidence recorded under this section shall ordinarily be in the form of a narrative. S. 359.

A Sessions Judge (and Magistrate) is bound to take a memorandum of the deposition of each witness as the examination proceeds: this is not complied with by a mere statement that a witness deposes the same as the last.—Byha Wullud Soorjin, 1 Bomb., 91; Muttee Nushyo, Suth. Rep., 1864, p. 18; Agra Sudder Court Cir. 18, 1865.

The practice of preparing the memoranda of evidence, required by S. 356, from the recorded deposition of witnesses, after their examination, is contrary to law.—Agra Sudder Court Cir. 13, 1865.

Want of time cannot be accepted as a valid excuse for not recording a memorandum of the evidence.—Smyth, p. 119.

The term "witness" in S. 356 includes a complainant.—Cal. H. Ct., 156, 1865.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman, the name of her husband), the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, Sept. 17, 1864; also Bomb. H. Ct., *Gaz.*, 1873, p. 20.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

(S. 335.)

Ch. XXV.

S. 357.

In BENGAL orders have been issued by Government extending this section to all Magistrate's Courts (Govt. Bengal, June 30, 1861) and to all Courts of Session (August 6, 1865).

In the Presidency of MADRAS these provisions have not been so generally extended, and are apparently restricted to special cases of particular and qualified officers.

The authority conferred on an officer by S. 357 is personal to that officer, and in force only so long as he remains in the District in which it has been conferred.—Mad. H. Ct. Pro. Nov. 25, 1869; Weir, 247.

In the Presidency of BOMBAY and in the NORTH-WESTERN PROVINCES the Local Governments do not appear to have exercised these powers.

In all proceedings before the Court of Session or before any Magistrate in the Settlement of Port Blair and the Nicobars, the evidence of complainants and witnesses is to be recorded in the vernacular language of the officer presiding over the Court.—*Gazette of India*, 1874, p. 49.

In the PUNJAB with the sanction of the Local Government, the Judicial Commissioner (Smyth, p. 118) issued the following orders regarding the record of evidence in criminal cases:—

All trials in which sentence of death is legal are to be conducted in the English language; there may be a counterpart in the vernacular of the Court at the discretion of the Judge for his own satisfaction.

All other trials are to be conducted under S. 356, unless the Judge prefer to adopt the above Rule in such cases also.

All trials in which a Magistrate commits to the Sessions, or passes final orders under S. 34 of this Code, are to be conducted under S. 356, unless the Magistrate prefer to adopt the above Rule, but in that case he must not omit the vernacular counterpart.

In Aden, English has been made the language of recording evidence in all trials before the Court of Session or any Magistrate or Bench of Magistrates.—*Gaz.*, 1873, p. 227.

A similar rule has been introduced into BRITISH BURMAH.—*Gaz.*, 1873, p. 7.

The following rules applicable to this section have been laid down by the Madras High Court (5 Mad. ix, *App.*, Pro. Nov. 25, 1869; Weir, *App.* xxii.

1. All applications from Judges or Magistrates for bringing into operation the provisions of this section must be made through the High Court.

2. In the case of Magistrates subordinate to the Magistrate of the District, all such applications should be accompanied by the expression of the District Magistrate's opinion whether the authority should be granted or withheld.

3. The authority so conferred on one officer is personal to that officer, and is in force only as long as he remains in the particular District in which it has been conferred.

4. When the authority to take down the evidence of witnesses in his own handwriting in his vernacular is conferred on any officer, all depositions taken before him should, unless for any special reason, be so recorded.

The examination of an accused should invariably be recorded in the language it is delivered.—3 W. R., 14 C. L.

In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence of which a prisoner is charged, the Calcutta High Court [Cir. 9, Aug. 28, 1865, Wilkins, 79] suggested the expediency of transcribing in Roman characters the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and in consequence to give them their due and proper weight. Should an instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which the Judge may be unaccustomed, an Interpreter should be employed in the manner prescribed by Ss. 361, 543, Code of Criminal Procedure.

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman the name of her husband), the religion, caste, profession and age of the deponent and the village or pergunnah in which he or she resides. —Cal. H. Ct. Cir. 19, Sept. 17, 1864. Also Bomb. H. Ct., *Gaz.*, 1873, p. 20.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

(S. 336.)

In depositions in which there may be any doubt as to the exact meaning of any expression used, and in which the doubtful expression has an important bearing on the offence of which a prisoner is charged, the Calcutta High Court [Cir. 9, Aug. 28, 1865, Wilkins, 79] suggested the expediency of transcribing in Roman characters the words actually used, in order that the Court may be in a position, on the matter coming before it, without fear of error, to determine on their exact signification, and in consequence to give them their due and proper weight. Should an instance occur in which a foreign language is used, or in which the evidence may be delivered in a dialect to which the Judge may be unaccustomed, an Interpreter should be employed in the manner prescribed by Ss. 361, 543, Code of Criminal Procedure.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his dis-

Ch. XXV.
S 359.

cretion take down, or cause to be taken down, any particular question and answer.

(S. 338.)

The examination of complainants and witnesses should contain the name of the person examined, and of his or her father (and if a married woman the name of her husband), the religion, caste, profession, and age of the deponent, and the village and pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, Sept. 17, 1864; also Bomb. H. Ct., *Gaz.*, 1873, p. 20.

The examination of witnesses should invariably be conducted in the presence of the accused person. The evidence of witnesses in another trial is not evidence against a person charged with the same offence who has been subsequently apprehended (Cal. H. Ct., Kassee Roy, January 27, 1863; Lalla Chowbay, 1 N. W. P.; Kolundass Doss, *Ib.*, 100), unless the case fall within S. 227, *ante*.

To read the deposition of a witness on some former trial to the witness is not an examination of the witness in the presence of the accused as to his knowledge of the facts, which form the subject-matter of the accusation: a trial where evidence is thus taken is no legal trial. In every trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new, and the witnesses had not been examined before—Sheikh Kyamut, Suth. Rep., 1864, p. 1.; Affazooddeen, *Ibid*, p. 13. It is not sufficient to read over his previous examination to a witness, calling upon the witness to identify the prisoner; and allowing the latter to cross-examine them.—Kanai Sheikh, *Ibid*, p. 38. See also Rajkrishna Mitter, 1 B. L. R.. 37, *Cr. Cr.*

The following orders have been issued by the Calcutta High Court (H. Ct. Cir., No. 12, Nov. 27, 1865):—

The evidence of witnesses should be recorded as soon as possible after their attendance. If, from unavoidable cases, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. Chief Magistrates of Districts are held responsible for the correction of any irregularities on the part of their subordinates in the discharge of witnesses.

Instead of examining the witnesses as soon as possible after their appearance at Court, in accordance with the positive directions of the above orders, the Deputy Magistrate was in the habit of temporarily discharging the witnesses and making them re-appear, in some cases several times before he passed his final decision. Such a mode of procedure is justly characterized in the Circular above cited as not only contrary to the spirit of the Criminal Procedure Code, but as calculated to deceive the superior authorities by placing before them fictitious returns of the punctual and regular examination and discharge of witnesses. The dishonesty of the practice cannot be too strongly condemned and the Lieutenant-Governor directs that all officers concerned be warned that any irregularity of the kind, whenever detected, will be severely punished.—Bengal Govt. Cir. 4442, July 10, 1869.

The Judges of the Chief Court, Punjab, have reason to believe that the register of witnesses attending Criminal Courts is very irregularly kept up, and frequently gives no indication of long detentions which occur in some Magistrates' Courts.

The Judges take this opportunity of reminding all Magistrates of the serious evils arising from undue detention of witnesses. In no point of criminal administration perhaps does the action of our Criminal Courts press more heavily upon the public, and in no matter does reform appear to be more imperatively called for.

It has been observed that Magistrates in some Districts adopt the system of not entering the witness as present, until the day on which the case may be made over to them by the Magistrate of the District. Delays between the arrival of the witnesses and the commencement of the inquiry by the Magistrate are very frequent, and often unnecessarily great; and it is obvious that if this period be not taken into account in the returns, they fail to show the true state of the case as to the period of detention, and the resulting inconvenience to the witnesses.

Where delay in the examination of witnesses has been animadverted on, it has frequently been urged that the witnesses have not appeared before the Magistrate on the day and hour at which by their recognizance they were bound to appear, in consequence of their detention in the Police office at the head-quarters of the District. If such detention occurs, it must be because Magistrates of Districts do not exercise that control over the Police officers of their Districts with which they are invested by law.

Magistrates of Districts should insist on cases sent in by the Police being brought before Magistrates having jurisdiction by the hour at which witnesses are pledged to attend. The provisions of the Code of Criminal Procedure in reference to the appearance of parties, and witnesses before the Magistrate having jurisdiction after enquiry, mentioned in S. 170, guard carefully against delay and should be strictly adhered to.

The Court therefore finds it necessary to lay down the following rules on this subject:—

In Police cases, where recognizances are taken by the Police officer for the witnesses' appearance, the date entered in col. 2 of the Witness Register (date of arrival) shall be the date entered in the recognizance (S. 130, Criminal Procedure Code). The witnesses in such cases ordinarily arrive on the day fixed, or before it; and where the witness does not arrive by such date, this should be explained in the column of remarks, and the actual date of arrival entered in column 2. But ordinarily the date of arrival will be checked by the date mentioned in the recognizance, which is filed with the record. In checking the register, therefore, Magistrates should turn up a few cases and compare the dates in the register with the dates in the recognizances filed with the case; and if any discrepancy exists, which is unexplained in the column of remarks, the official who keeps the register should be called to account. As a necessary consequence, Sundays and holidays will be included in calculating the period of detention; and where any considerable delay has resulted from the intervention of holidays, this should be explained in the column of remarks, but Magistrates should make

Ch. XXV. special efforts to dismiss all witnesses in attendance on the day preceding a holiday.

Ss. 360, 361. Similarly, in cases where the witness appears on a summons issued from the Magistrate's Court, the date entered in column 2 of the register, should be the date mentioned in the summons as that fixed for his appearance. The same checks will apply

A register in the prescribed form shall be kept up in every Magistrate's Court by one of the officials of the Court. It should be initialled by the Magistrate every week.

Where delay has occurred, and any considerable part of it is owing to the case having been detained in the Court of the Magistrate of the District, an explanation to that effect should be entered in the column of remarks.

The Magistrate of the District should check every month, a few of the diaries kept up in the Courts of his subordinates, and in the quarterly statement of attendance of witnesses he will certify that he has done so, adding remarks as to the result of his examination. If this certificate is omitted when the quarterly statement is received by the Commissioner, that officer should send back the statement, in order that the omission may be supplied.—Smyth, pp. 127—129.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

(S. 339.)

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

(S. 340.)

Where the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of any such evidence or statement. S. 543. Oaths or affirmations shall be made by interpreters of questions put to, and evidence given by witnesses unless he is an official interpreter of any Court, after he has entered on his duties. The Indian Oaths' Act (X of 1843) S. 5. See note to S. 543 *post* for the form of oath or affirmation to be administered.

Record of evidence in Presidency Magistrates' Courts

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

(Act IV, 1877, S. 115.)

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

(S. 341.)

Ch. XXV.

S. 364.

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

(S. 346.)

The examination of the accused is for the purpose of enabling him to explain any circumstances appearing in evidence against him. With this object the Court may from time to time, at any stage of the inquiry or trial, put such questions as the Court considers necessary, and after the witnesses for the prosecution have been examined and before he is called upon for his defence, the Court shall for the same purpose question him generally on the case. The accused is not bound to answer

such questions; but the Court and the Jury (if any) may draw such inferences from his refusal or answers as it thinks just. The answers given by the accused may be taken into consideration in such inquiry or trial, and put on evidence for, or against him, in any other inquiry into or trial for any other offence which such answers may tend to show he has committed S. 342.

The Police officer who brought the prisoner should not be present when a confession is taken, nor should he be allowed to suggest questions to be put. Though a confession so taken would be admissible as evidence, a Court would not attach much weight to it, as such a course suggests that the Magistrate was not really conducting the inquiry himself.—Cal. H. Ct. Cir. 7, July 30, 1873.

After having made a full confession, and its being read over to him, the accused retracted and said:—"I said this because the Police beat me." The Magistrate and the Sessions Judge both found the allegation to be false and the Judge mainly convicted on the confession, but the High Court as a Court of Reference rejected it as evidence.—Gurbad Bechan, 9 Bomb., 344.

"The examination of the accused shall be recorded in full in the language in which he is examined, or, if that is not practicable, in the language of the Co rt or in English."

It is exceedingly important that this should be strictly observed so that the exact shade of expression made use of by an accused person should be deducible from his recorded statement, his whole statement being recorded *in extenso* precisely as made.—Mad H. Ct. Pro., May 13, 1867, Weir 247.

The examination of an accused person should be recorded in the language in which it is delivered, notwithstanding that the Local Government may, under S 357, have ordered that the evidence shall be recorded in English —Gonesh Koormee, 4 W. R., 1; also 3 W. R., 14, C. L. It shall contain the name of the person examined, that of his or her father (and if a married woman that of her husband), the religion, caste, profession, and age of the person examined, and the village or pergunnah in which he or she resides.—Cal. H. Ct. Cir. 19, 1864; also Bomb. H. Ct. *Gaz*, 1873, p. 20.

The following has been prescribed by the Calcutta High Court as the form in which the examination of an accused person is to be recorded (Cir. 3, March 24, 1880; Wilkins, 73)

The examination of , aged about years
taken before me , Magistrate of the class,
at on the day of 188 :—
My name is
My father's name is
I am by caste , and by occupation
My home is at Mouzah , Thannah
District . I reside at

Where an interpreter is employed, the examination of the accused should be recorded in the language in which it is communicated to the Court by the interpreter. Vaimbillee, I L. R., 5 Cal., 826. The omission to record in the vernacular the questions put to the prisoner, (they being recorded in English by the Magistrate) did not prejudice the prisoner as the questions were of such a nature that it was immaterial

Ch. XXV.

S. 364.

to the sense and meaning of the statement made whether they were recorded or not.—Titoo Mya, 1 Cal. L. R, FULL BENCH.

The certificate need not be written by the Magistrate himself. It is to be under his hand, that is, signed by him.—Reza Hossein, 8 W. R., 55.

The law requires attestation by the signature of the Magistrate and is not satisfied by the affixing of an unreadable initial to what purports to be the statement of the accused —Bhikaree, 15 W. R., 63

The Madras High Court has disapproved of any general instructions being issued to the Magistracy in regard to questioning accused persons as to the voluntariness of confessions made by them. The High Court added :—When a confessional statement is put in before a Court which is to try the prisoner, that Court is to be satisfied that the confession was really made. Undoubtedly great care is required in testing such statements, but experience shows that a man who has made a perfectly free and true confession is so astonished in his passage through several Courts that people seem not to believe him that he at last retracts.—Pro, Dec. 15, 1871 ; 7 Mad. Jur., 136.

The explanation to S. 193 should be borne in mind in connection with S. 346. The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

S. 30 of the Evidence Act (I of 1872) is also important. It is to the following effect :—

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—'A and I murdered C.'

The judgments of the High Court on this section have been collected in a note in the Appendix, the substance being that to make a confession by an accused evidence against another tried jointly for the same offence, it must be sufficient of itself to convict the former of that offence.

Where the attestation and certificate to a statement made by an accused person are wanting, an Appellate Court is not competent to direct them to be supplied and to receive that statement as evidence. The absence of attestation or certificate is not necessarily fatal, but before acting on a statement wanting such, an Appellate Court is bound to take evidence and satisfy itself that the prisoner duly made the statement recorded.—Vyankatra Srinibas, 7 Bomb., 59, *Crown Cases.*

S. 346 declares that "the accused person shall sign or attest by his mark," this is not satisfied by the following subscription :—

"Signature of A B (the accused) the handwriting of C D"—Where the conviction of a person was substantially based upon a confession thus subscribed, it was reversed, the High Court holding that

the Sessions Judge was bound to prevent such a confession being admitted as evidence.—Bomb. H. Ct., Daya Anand, March 12, 1874.

If any Court before which a confession or other statement of an accused person recorded under S. 164 or S. 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded and notwithstanding anything contained in the Indian Evidence Act, S. 91, such statement shall be admitted, if the error has not injured the accused as by his defence on the merits. S 533. It should be noted that the terms of the section will generally enable a Court to correct any omission or irregularity in the record of a confession made either before or during the course of an inquiry which, under the Code of 1872, the High Courts have held could not be remedied in a confession recorded under S. 122 of that Code. It is unnecessary to quote those rulings which are now obsolete.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Punjab may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

(Act X, 1875, S. 68.)

CHAPTER XXVI.

OF THE JUDGMENT.

The rules contained in this Chapter shall apply as far as practicable to the judgment of an Appellate Court other than a High Court. Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend to hear judgment delivered. S. 424

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the

sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

(S. 211, para. 3; S. 462.)

The personal attendance of the accused may be dispensed with by a Magistrate in any case in which he issues a summons. S. 205. It is unnecessary unless otherwise ordered by the Appellate Court for the purpose of hearing judgment delivered in his appeal. S. 424.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

(S. 255, last para.; S. 287, para. 2; Ss. 461, 463, 464.)

The Local Government may determine what, for the purposes of the Code, shall be deemed the language of each Court within the territories administered by such Government. S. 556.

Section 367 does not provide for an alternative finding in a case in which it is doubtful of which of two offences under the *same* part of the *same* section the accused person is guilty,—for instance, a case in which a person is charged with having intentionally given false evidence in making one statement, and again with the same offence in making a diametrically opposite statement. It has been usual to enter each of these offences in a separate head of the charge and for some attempt to be made by the prosecution to prove one or other of these offences, and for the Court of Session, if not satisfied with the evidence as to the truth or falseness of either statement, but still being satisfied from the contradiction that the accused is guilty of having intentionally given false evidence, to convict in the alternative form of finding. But though S. 367 does not expressly provide for this procedure, it will be seen from a reference to the last form of charge given in Schedule V, No. 28 (II) that it is contemplated that such charges should be made in one charge, and not in two separate heads as heretofore. Probably, therefore, if any evidence is offered, or is likely to be offered in proof of the falseness or truth of one of such contradictory statements, a separate head of the charge will be made so as to provide for each offence and the alternative form of charge will also be given.

The Calcutta High Court (present the Chief Justice, and six Judges concurring; Jackson and Phear, JJ., *dis.*) held, that on a charge of intentionally giving false evidence in making two contradictory statements [see Schedule V, No. 28 (II), last form of charge], the Court or Jury, if convicting, need not by direct evidence find which of the two statements is true, but that it is sufficient that there should be a finding, that the allegations made in the charge are proved.—Mahomed Hamayoon Shah, 21 W. R., 72.

Though it is advisable to offer some evidence as to the truth or falseness of one of the statements, this is not indispensable to a legal conviction. See the case of Ganowree, 22 W. R., 2, in which the contradictory statements made were the only evidence offered.

It is the duty of every Judge if he thinks that the committing Magistrate has acted erroneously to point out the error.—Mad. H. Ct., Pro. Feb. 24, 1879; Weir, 138.

The responsibility rests with the Sessions Judge to decide whether there are circumstances of extenuation sufficient to justify the infliction of a punishment less than death.—He should not therefore pass sentence of death and refer the case to the High Court with a recommendation to mercy.—Mad. H. Ct, April 24, 1866; Weir, 210.

The terms "heads of the charge" must be construed reasonably, and must be held to include such a statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the Jury, or whether there has been any misdirection in the charge.—Kasim Sheikh, 23 W. R., 32. But it need not be reduced to writing before delivery.—Cal. H. Ct. Memo. 2, 1875; 23 W. R., 7, *Rules, &c.*

Sentence of death.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Ch. XXVI.

S. 369. Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.
(Ss. 319, 321.)

The Sessions Judge should fix the time and place for carrying out sentences of death, and should give orders regarding the disposal of the corpses of executed convicts.—Cal. H. Ct., 1863.

Capital sentences are passed by Sessions Judges subject to confirmation by the High Court to whom the proceedings are referred. Ss. 375—379 of this Code lay down the procedure to be followed by that Court, and Ss. 381, 382 declare how such sentences shall be executed.

Sch. V, No. 34 gives the form of warrant of commitment to Jail under sentence of death, and No. 35 that of warrant of execution after sentence of death has been confirmed.

The proper form of passing sentence of transportation in cases in which imprisonment can be imposed for seven years or upwards is, in accordance with S. 59, Penal Code, to sentence the convict to transportation, recording that, under that law, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—Cal. H. Ct. Cir. 9, Aug. 3, 1866; Panj. C. Ct Cir. 25, Sept. 26, 1866. But see Sch. V, No. 36. Under the Penal Code, no offence is made punishable with transportation for a term of years, otherwise than by this process of commutation.

369. Court not to alter judgment.

No Court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error.
(S. 461, para. 1.)

When judgment has been signed by a Magistrate, it cannot, by law, be altered by him. But on finding that he has passed an illegal sentence, a Magistrate may, if the prisoner is suffering prejudice, direct the Jailor to suspend execution and merely keep the prisoner in detention, which should in no case exceed the term of imprisonment awarded, until the orders of the High Court are received on his reference. Empress *v.* Tukaram Ramji, Bomb. H. Ct. 29, 1878.

When an illegal sentence of whipping in addition to imprisonment, was passed by a Magistrate, and the discovery of the illegality was made before execution, but after sentence had been pronounced and signed, it was held that such sentence could be altered only by the High Court.—Mad. H. Ct. Pro., Nov. 13, 1873; 8 Mad. Jur., 466. Puran Mal., 23 W. R., 49.

Magistrates of the second or third class should submit to the District Magistrates a calendar of every case in which conviction takes place within twenty-four hours of the sentence being passed, to enable the District Magistrate at once to take measures towards rectifying injury done by an illegal sentence.—Bomb. H. Ct. Cirs., p. 43.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any):

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

(Act IV, 1877, Ss. 114, 126.)

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(Ss. 271, 464.)

(Act XI, 1874, Ss. 22, 41, para. 1.)

Ch. XXVI.

S. 371.

In exercise of the power conferred by S. 35 of the Court Fees' Act (VII of 1870) the Governor-General in Council has remitted the fees leviable on account of a copy of the judgment or order passed by a Criminal Court and of a Judge's charge to the Jury furnished on the application of any party affected by such judgment or order, provided that such person is in Jail, or the Court, for some special reason sees fit to grant such copy free of expense. Govt. India, Not. 996, June 6, 1873.

S. 371 in some respects goes beyond this Notification because it provides that except in summons cases, a copy of the judgment and in trials by Jury, a copy of the heads of the charge to the Jury shall be given to the accused free of cost without any reservation that he has been convicted still less that he is in Jail or entitled to special indulgence. On the other hand the Notification makes no reservation regarding summons cases except that the accused is in Jail, or the Court, for some special reason thinks fit to grant a copy of the judgment free of expense. S. 548 provides that if any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the Jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost. An application for a copy of a judgment or order or the heads of the Judge's charge to the Jury must be made on a paper bearing a Stamp of one anna.—Court Fees' Act (VII of 1870), Sch. II, Art. 1 (*a*).

The Sessions Judge or officer in charge of the Jail should affix his signature to the application or to the envelope in which it is transmitted. This will afford sufficient proof that the application really emanates from the person sentenced. Every reasonable facility consistent with the requirements of the law should be given to prisoners who consider that they have been unjustly dealt with and are desirous of appealing to a superior Court.—Mad. H. Ct. Pro. Aug. 4, 1864; Weir, 278.

The ordinary charge for a copy is at the rate of eight annas for every three hundred and sixty words or fraction of three hundred and sixty words.—Act. VII of 1870, Sch. I, Art. 9.

Copies of evidence on a trial are not exempt from payment of the usual Court Fees, unless, for some special reason the Court thinks fit to furnish them free of cost. S. 548 *post*.

When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorized charge for making the same.—Subbayya Gaundan, 1 Mad., 138.

The period within which an appeal should be preferred from a sentence of death passed by a Sessions Judge is seven days from the date of the sentence.—Act XV of 1877, Sch. II, Art. 150.

S. 271B of the repealed Code enacted by Act XI, 1874, S. 22, required the Sessions Judge in such cases to delay the transmission of the reference to the High Court for a reasonable time, not exceeding seven days, so as to allow the appeal and reference being made at the same time. This has not been re-enacted in the present Code, but the Sessions Judges should exercise such a discretion as heretofore.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

(S. 464, para. 3.)

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

(S. 302, para. 1.)

On application made by the Magistrate of the District or the Sessions Judge for a copy of any judgment delivered by him, the Judge should permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted to Magistrates and committing officers only for their information and guidance; they are not at liberty to cavil at the judgment of the Sessions Court, or to enter into any discussion with the Judge upon its merits.—Cal. H. Ct. Cir., 1, Jan. 1, 1864; Wilkins, 109.

Sessions Judges should give every facility to Magistrates, and District Superintendents of Police for inspecting the records of cases in their Courts and for the preparation of copies by clerks sent by the District Magistrate, care being taken that the records are not removed from the Judge's office.—Cal. H. Ct. Cir. No. 5, Sept. 21, 1880; Wilkins, 127. When the Divisional Commissioner requires the records of a criminal trial in order to satisfy himself whether Government should be moved to direct an appeal against an original or appellate judgment of acquittal the Sessions Judge should comply with the requisition.—Cal. H. Ct. Cir., Jan. 12, 1877; Wilkins, 127.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(S. 287, para. 1.)

On passing sentence of death, the Sessions Judge should give immediate intimation to the Superintendent of the Jail in which the condemned prisoner is confined, in order that proper precautions may be taken for his safe custody.—All. H. Ct Cir. 3, April 22, 1873.

Sch. V, No. 34 provides a special form of warrant of commitment to Jail on passing of a sentence of death by a Sessions Court subject to confirmation of the High Court.

The Sessions Judge should also record whether he has inquired whether the convict desires to appeal against that order, and that he has informed him that such appeal must be made within seven days as directed by S. 371, last clause.—All. H. Ct., Cir. 1, Jan. 29, 1873.

The responsibility rests with the Sessions Judge to determine whether there are circumstances of extenuation sufficient to justify the infliction of a punishment less than death. He should not therefore pass sentence of death and refer the case to the High Court with a recommendation to mercy.—Mad. H. Ct., April 24, 1866; Weir, 210.

The MADRAS High Court (Pro., Aug. 6, 1864: Pro., Aug. 12, 1862) have ordered that in referring a case to the High Court for confirmation of the sentence of death, the particulars of the evidence and the Judge's remarks should be embodied in a letter to the Registrar, and that an English translation of the whole of the evidence given at the trial should also be submitted.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the pre-

sence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

(S. 289)

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

(S. 288.)

The High Court are bound to go into the facts of the case, although the conviction was by verdict of a Jury.—Jaffir Ali, 19 W. R., 57. See also Ramsodoy Chuckerbutty, 19 W. R., 19, in which, contrary to the verdict of the Jury concurred in by the Sessions Judge, the majority of the Judges of the High Court acquitted on the evidence.

The prisoner after committing murder attempted suicide by cutting his own throat, and became in such a state that it was probable that if he were hanged, decapitation would ensue. He was accordingly sentenced to transportation for life instead of to death. Boodhoo Jolaha, 2 Cal. L. R., 214.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

(S. 290.)

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

(S. 271 B; Act XI, 1874; S. 22, last para.)

The same provision is made by S. 429 for a similar contingency in an appeal.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

(S. 301, para. 1.)

Ss. 381, 383 declare the course to be taken by the Sessions Judge on receipt of the copy of the order of the High Court.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

(Ss. 18, 36.)

The powers thus given to a Sessions Judge are identical with those given to the High Court under Ss. 375, 376, except that his powers of sentence are limited to those of the Court referring the case for confirmation. See Ss. 31, 34.

CHAPTER XXVIII.

Of Execution.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

(S. 301, para. 2.)

If the sentence of death is confirmed a warrant in the form given in Sch. V, No. 35 should be issued to the Jailor.

It is the duty of the Sessions Judge to fix the time and place of execution of sentence of death.

In Bengal it has been ordered that such a warrant shall fix a time for execution of the sentence at an interval not less than fourteen or more than twenty-one days from the date of issue of the warrant.—Cal. H. Ct Cir, March 8, 1876. See also Bengal Govt. Cir. April 7, 1876.

In Madras it has been ordered by Government that sentences of death shall not be carried into execution by officers in charge of Jails until the fifteenth day after the receipt from the Court of Session of the warrant issued under S. 381 after confirmation of such sentence by the High Court, and that in cases from the Ganjam, Vizagapatam, and Canara Districts, such sentences shall not be carried into execution until

C. XXVIII. the twenty-second day after the said date.—Govt. Order, May 23, 1873.

S. 382. In BOMBAY it has been ordered that there shall be at least fourteen days from the receipt of the order of confirmation of sentence.—Bomb. H. Ct. Cir. 382, 1866.

Warrants for the execution of capital sentences should be addressed to the officer in charge of the Jail, but it is necessary that the execution should be superintended by the Magistrate or some Magisterial officer deputed by him for that purpose. The officer in charge of the Jail should communicate with the Magistrate of the District and take his orders as to details.

All sentences of capital punishment shall be carried out at the Sudder Station unless it be otherwise ordered in the warrant. The spot at which the execution is to take place shall be fixed by the Magistrate of the District, and shall generally be at such distance from habitations that no annoyance need be caused to the public by the spectacle. No execution should take place within the Jail walls, and no attempt should be made to give anything of a private character to the execution, but at the same time undue publicity should not be courted. To this end the early morning should be the time selected for execution. The prisoners in the Jail should not be made to attend. The medical officer should attend throughout the execution. The body should hang for one hour, and should not be taken down until the medical officer declares life to be extinct.—Govt. of Bengal, Oct. 4, 1869.

When the officer in charge of a Jail is a Civil Surgeon, or Chief medical officer, no Magistrate need attend to witness execution of a sentence of death, unless the Commissioner or Magistrate of the District should think it desirable, but when the officer in charge of the Jail is of no special rank, the Magistrate or a Subordinate deputed by him should be present at the execution.—Govt. of Bengal Cir. 92, July 24, 1873.

In the warrant which a Sessions Judge issues to the Jailor for the execution of a sentence of death, he should direct execution to be carried out in the presence of a Magistrate of the first class or District Superintendent or Assistant District Superintendent of Police. It should also be stated in the warrant that execution is to be carried out on a day to be named that shall be at least fourteen days from the date of the receipt of the confirmation of the sentence by the High Court.—Bomb. H. Ct. Cir., 65, 66.

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

(S. 306.)

The pregnancy should be certified by the Civil Surgeon, and the warrant returned to the Sessions Judge with an endorsement to that effect.—Agra Sud. Ct., 1864.

In such a case the Sessions Judge is competent only to direct postponement of the execution of the sentence until further orders of the High Court. The Madras High Court limited the postponement of execution of sentence of death until such time after the delivery of the woman as was necessary to obtain its further orders. The Court further directed that the delivery of the woman be reported with the least possible delay, and to be accompanied with a statement of the opinion of the medical officer of the Jail as to the date on which the prisoner would be able to undergo the sentence passed on her.—Pro. June 4, 1879; Weir, 225.

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

(S. 302 A, cl. 1; Act XI, 1874, S. 32.)

Sch. V, No. 36 gives a form of warrant after a commutation of sentence of imprisonment to transportation.

The Governor-General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent: and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence. —Act IX, 1882.

Warrants of imprisonment directed to Superintendents of District Jails shall be in the English language; and warrants directed to the keepers of sub-divisional Lock-ups shall issue in the Vernacular except where the sentence is for imprisonment of a longer term than fifteen days in which case the warrants issued by sub-divisional authorities shall, if possible, be in English.—Cal. H Ct. Cir. 10, August 27, 1873.

The residence of the convict should be entered in the warrant to enable the proper preparation by Police officers of the "Roll of Released Prisoners," after expiry of the sentence.—Cal. H. Ct. Cir. 7, Sept. 10, 1868; 1 B. L. R., Rules, &c.; 15, and Agra Sud. Ct. Cir. 7 f, 1866.

Every Criminal Court, when it passes sentence of imprisonment or transportation, shall endorse on the back of the warrant of sentence—

1. The age of the convict; 2. His caste; 3. His place of residence.

If after trial any previous conviction has been established, there should also be endorsed.

1. The offence of which the convict was previously convicted.
2. The sentence passed upon him for that offence.
3. The date of that sentence.

C. XXVIII. — S. 384.

4. Name and designation of the trying authority.—Bomb. H. Ct. Cir., p. 45.

When the accused person is a soldier or person holding any rank in the army, the warrant of imprisonment shall set forth accurately the rank of the prisoner and the Regiment or Military Department to which he belongs.—Cal. H. Ct. Cir. 12, Nov. 28, 1873.

The MADRAS High Court has issued the following orders on this subject :—

All warrants or orders addressed to officers in charge of Central or District Jails by Judicial or Magisterial officers shall, whenever practicable, be prepared in the English language.

In every case in which two or more persons are jointly charged and convicted of an offence before a Court of Session or Magistrate, it shall be necessary to issue a separate warrant or order for the commitment to prison of each person under the sentence passed upon him.

Orders or Warrants directing the release of a prisoner should be addressed to the officer in charge of the Jail and sent direct to him.—Mad. H. Ct., Jan. 9, 1867; Feb. 8, 1867; and March 13, 1868; Weir, *App.* xlvii.

When a prisoner is acquitted after trial by a Session Court, it is not necessary to send a formal warrant of release to the Superintendent of the Jail.—*Id.* Oct. 30, 1869; Weir, *App.*, l.

A Register of warrants in the following form has been ordered by the CALCUTTA High Court (Cir. 167, May 15, 1835; 11, Oct. 1, 1866; 1, Jan. 11, 1871; Wilkins, 6) to be kept by Sessions Judges :—

Register of Warrants.

1	2	3		4		5			
Name of prisoner.	Date of sentence.	Term of imprisonment.		When the sentence will be expired.		Warrants when received from the Jailor or Magistrate.			MEMO
		Years.	Months.	Month.	Date and year.	Month.	Date.	Year.	

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

(S. 303.)

See note to S. 383.

The date of the termination of all terms of imprisonment should be distinctly expressed in the warrants of commitment. In cases in which the imprisonment is to take effect on the expiration of a previous sentence, the commencement of the imprisonment is to be stated accordingly.—Cal. H. Ct. Cir. No. 3, Dec. 19, 1876; Wilkins, 71.

Whenever a soldier is committed to jail whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the Military authorities of the day and hour on which his imprisonment will expire, as required by the 33rd clause of the Mutiny Act.—Smyth, p. 148; Cal. H. Ct. Cir. 12, November 28, 1873.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

(S. 304.)

Act V, 1871, S. 16, empowers officers in charge of prisons outside Presidency-towns to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of any Local Government.

A warrant under the official signature of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement or sending any prisoner for transportation beyond the sea in pursuance of the sentence passed upon him. S. 17.

Any officer in charge of a prison doubting the legality of any warrant sent to him for execution, or the competency of the person, whose official seal and signature are affixed thereto, to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officer and all other public officers shall be guided as to the future disposal of the prisoner

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant. S. 18.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

(S. 307, para. 1.)

Sch. V, No. 37 gives a form of warrant to levy a fine by distress and sale.

Act I, 1868, S. 5 declares that the provisions of Ss. 63—70 (both inclusive) of the Penal Code, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain a special provision to the contrary.

C. XXVIII.

S. 386.

Of the sections of the Penal Code referred to, S. 70 is very important in the matter of the levy of fines, inasmuch as it declares that a fine or any portion thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and, if under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period: and the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts.

From the terms of S. 386 of this Code and S. 70, Penal Code, it will be seen that although a sentence of imprisonment on default of payment of the fine may be passed or be in course of execution, or even undergone, the offender is still liable for the amount unpaid until the expiration of six years after the passing of the sentence and the Court which passed the sentence may issue a warrant for its realisation at any time within that period.

A sentence of fine must be specific as to each person fined. It is not legal to pass a sentence of fine of a certain amount on the prisoners individually and collectively.—5 Mad. App. v.; Pro. Nov. 11, 1869.

The Calcutta High Court (4 W. R., C. L. 6,) has held that although under the Code of Criminal Procedure only moveable property belonging to the offender is liable in satisfaction of a fine, under the terms of S. 70 of the Penal Code, *after his death, any* property which would be legally liable for his debts would be liable to the payment of a fine remaining unpaid at his death, the restriction as to the distress and sale of moveable property continuing only during the lifetime of the offender. The Bombay High Court, however, declined to follow this rule in the case of Lalla Karwar, 5 Bomb., *Crown Case*, 63.

S. 70, Penal Code, is permissive not imperative. The Court should exercise its discretion according to the circumstances of each particular case. If there is reason to believe that the convict is able to pay and is preferring to undergo imprisonment, this law should be strictly enforced: but if it appears that the fine was not paid for want of means, or that its realization would be ruinous to the offender or his family, it is not desirable that further steps should be taken.—Smyth, p. 109.

"Such of any moveable property belonging to the offender." The language of S. 386 denotes things which may be taken by distress and then sold so as by the mere act of sale to pass the property on them, but mere rights and interest in shares or joint moveable.—Mad. H. Ct. Pro Feb. 14, 1867; Weir, 227. Standing crops are not moveable property within the meaning of S. 386.—Mad. H. Ct. Pro. Nov. 18, 1878; Weir, 228.

There should be no delay in the levy of a fine. It should not be deferred until the result of any appeal that the convict may make be known; nor can the Appellate Court order a lower Court to abstain from issuing the warrant for the levy of a fine.—2 W. R., C. L., 13.

The warrant for the levy of a fine should be directed to a Police officer, and should fix a time for the sale and for the return of the warrant. If no one claims the property distrained, the Police have the power of selling it within the time that should be specified in the warrant without any previous reference to the Magistrate; if a claimant

comes forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the Police. If, at any time subsequent to the return of the warrant, and within the period of six years from the passing of a sentence, the fine or any part thereof remains unpaid (S 70, Penal Code), and the Magistrate, from information gained in any way, has reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of that property within a specified period returnable within a certain time.—Cal. H. Ct., No 8, June 22, 1864. Wilkins, 111. 44 Bomb. H. Ct. Cir., S. 386 applies only to British India. Fines therefore cannot be realized in any Foreign State.—Mad. H. Ct. Pro. July 28, 1878. Weir, 229.

In Bengal, under the Court Fees' Act, a fee of *one rupee* has been fixed on every warrant of levy of fine, and a percentage on the amount of fine, *viz.*, 2 per cent. on sums not exceeding Rs. 100; and when the sum exceeds Rs. 100, then 2 per cent. on Rs. 100, and 1 per cent. on the amount of excess. Such percentage is to be deducted from the proceeds of the property sold, or to be paid, together with the amount levied, and with the other costs of process as stated in the warrant.—*Cal. Gaz.*, 1874, p. 478; 21 W. R, Rules, &c., p, 12. This rule would however, apply only to non-cognizable cases, see Court Fees' Act (VII, 1870), S. 20, Cl. ii.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(S. 307, para. 2.)

The Civil Ministerial officer of the Court is held responsible that on realisation of the fine, on non-payment of which alternative imprisonment has been attached, immediate intimation be given to the Jail authorities.—Mad. H. Ct. Pro. March 12, 1867; Weir, *App.* xxii.

If an adverse title be set up to property attached by order of a Magistrate for the levy of a fine, the Magistrate should inquire into the matter.—Cal. H. Ct., 435, 1864.

The following orders on this subject have been issued by the Chief Court, Panjab. Smyth, pp. 109—111.

Whenever a fine is imposed, whether it is in addition to imprisonment, or whether it is the only punishment, a separate written order should be signed and sealed by the Magistrate imposing the fine. This should be a lithographed form addressed to the Court Inspector, or Deputy Court Inspector, or other official discharging the duties of the Court Inspector, or to the Sheriff in districts not under the organized Police. This writ is returnable in one fortnight, during which period the offender will be informed in person of the amount of the fine imposed by the Magistrate; the Police will inform the friends of the offender and if they tender the money, the same will be certified to the

C. XXVIII. Magistrate, who, when the party is under restraint, will at once notify the same to the Darogah of the Jail. If within that period no tender
S. 387. is made, the fact of notice given will be endorsed on the return, and in either case the work of the Police is done.

When fine is the only punishment imposed for a non-heinous offence, and the offender is notoriously a man of substance residing in the district, the Magistrate is at liberty to allow him to remain on bail or personal recognizance at large for the period of one week, so as to admit of his arranging for the payment of his fine, at the close of this period, imprisonment will be enforced in default. The Court Inspector or Sheriff in districts where the Police is not organized, should be informed by a written order of the term of grace allowed, at the close of which they will take care that, if the fine is not tendered to them, the warrant of arrest and imprisonment is issued. (See S. 388 of the Code.)

At every head-quarter station; every out-station, and station of Cantonment Magistrate, Honorary Magistrate, and Tehseeldar, there will be one vernacular Fine Register, and it will be the duty of the reader of each Court to see that fines issued by the Judicial officer on whom he attends are entered the same day in that register. This register should be signed daily by the Magistrate of the District at head-quarter stations and by the Judicial officer at out-stations, and every order to realize a fine should bear a memorandum of having been registered with its number.

The Registrar of Fines is to be specially charged with the custody of the above register, and the duty of seeing that the necessary measures are taken from time to time to realize the fine. He should look for his orders to the officer who daily under the above rule signs the register. Where there is no Registrar of Fines, the duty should be entrusted to one of the departmental clerks.

When the Court Inspector or the Sheriff, as the case may be, has certified that the fine has not been realized by his efforts (which are restricted to an oral demand for payment, it remains for the Magistrate of the District at head-quarter stations, and the Judicial officer elsewhere, to decide what steps should be taken to issue a distress for a forcible levy of the amount. For this purpose the Magistrate will employ the Tehseeldar of each Pergunnah and endorse the report of the Court Inspector or Sheriff with an order to the Tehseeldar to ascertain the moveable property of the offender and to attach the same. Although agricultural implements are not exempt from distress and sale in realization of a fine, the measure is one which should be resorted to with discretion, otherwise it may entail undue hardship in cases which do not require such severity.

Cantonment Magistrates and Honorary Magistrates must realize their fines by the officers of their own Courts.—Smyth, pp. 109, 110, 111.

"A fine occupies the position of a judgment-debt; the Sub-Magistrates will use the same formalities in attachment, sale, and adjudicating upon the objections, which are in force in the execution of civil decrees, with this difference, that the process issues on the criminal side.

"When an objector comes forward, he should be warned of the penalties contained in S. 207 of the Penal Code against fraudulent claims to property to prevent its seizure in satisfaction of fine; after

this warning the objection should be disposed of either by admitting the claim, or referring the objector to a civil action, if his claim seems *primâ facie* groundless. When a Sub-Magistrate has realized a fine, he will credit it in his accounts, and certify the same to the Magistrate, who will at once notify the same to the Darogah of the Jail.

"The Tehseeldar of a Pergunnah will always receive a fine tendered by the Police or any other person, and grant a receipt, which receipt will be admitted by the Magistrate as payment. The Magistrate will receive fines tendered in his own Court. If the fine is tendered within the fortnight allowed to the Police to realize, the payment will be made through the Court Inspector that there may be a record of the transaction on his books. The Magistrate is also at liberty in special cases to allow fines to be paid by instalments not extending beyond a period of six months. The Darogah of Jails will also receive fines, and send them, with report, to the Magistrate, who will inform the Court Inspector, Sheriff, or the Sub-Magistrate according to the stage at which the transaction may have arrived."—Jud. Comr., Panjab, Cir. 54, Nov. 17, 1862.

Memoranda showing the amount of all fees, fines and penalties levied during the month are to be forwarded by every Magisterial officer to the District Magistrate on the last day of each month, and a general statement is to be prepared by him and forwarded to the Court of Session —Mad. H. Ct., Dec. 21, 1868; Feb. 9, 1869.

The following Rules have been issued by the Government of Bengal, November 22, 1868, for the realization of Criminal Fines:—

1. The only books to be kept are a Fine Register and a Fine Balance Statement.

2. In every Sudder or Sub-Divisional office there shall be kept a register, in Form A, in the hands of the Court Inspector or Sub-Inspector. In this shall be entered in a consecutive monthly series all fines imposed by any of the Magisterial officers of the station, or imposed by Sessions Judges or the High Court and transferred to the Magistrate for realization. In each Court, one of the mohurrirs shall be specially charged with the duty of looking after the fines or other sentences.

3. When an offender is sentenced by the Magistrate, a small printed form shall be at once filled in with the particulars, and sent with the prisoner in charge of a Constable to the Court Inpector's office.

4. The printed forms prescribed in Rule 3 should be bound together in the form of a cheque book, the outer section being torn off and sent with the convicted person to the Court Inspector's office, and the counterpart being kept in the Magistrate's office. A consecutive number should be given to each form. This form should be used by the Magistrate in all cases, whether the fine is imposed by himself or by the Sessions or High Court, and the number in column 1 of the Register A should be the number of this form. The counterparts will enable the Fine Mohurrir to check easily the Court Inspector's books.

Fines under Penal Code.

5. The Court Inspector will then make the necessary entries in his Register of Fines, if fine be part of the sentence, and will call upon the prisoner to pay the amount. If this be done, the necessary entries should be made and the payer released, unless he be also sentenced to imprisonment. If the sentence be one of fine only, and the fine be paid in part, the

C. XXVIII. — S. 387.

entries will be made and prisoner released and application be made by the Court Inspector for a warrant for realization of the balance to the Court which passed the sentence. If the sentence be one of fine only, and the fine be not paid at all, the Court Inspector shall apply for a warrant for the realization of the whole amount. No person, not also under sentence of imprisonment, alternative or otherwise, shall be detained by the Court Inspector on account of inability to pay the fine. Where the sentence is one of fine, but with an alternative sentence of imprisonment on failure to pay the fine, if the fine be not wholly satisfied at once, the Court Inspector shall report to the Court which imposed the sentence and shall take its written orders as to the term of imprisonment proportional to the amount still unpaid which, under S. 69 of the Indian Penal Code, the convicted person has yet to undergo.

6. A receipt should be granted to the person paying a fine by the Court inspector or other Police officer to whom it is paid.

7. Any further payments made during the currency of the term of imprisonment must be at once reported to the Magistrate by the Court Inspector with a view to the further amendment of the sentence of imprisonment or the release of the prisoner as the case may be.

Fines under local or special law.

8. In any case where, under any special or local law, imprisonment in lieu of fine is to be taken as a full satisfaction of the penalty, if the convicted person elect to undergo the imprisonment, the Court Inspector must bring him at once before the Court imposing the sentence, which shall certify to the fact of the election, and the amount of fine shall, if entered, be struck out of the Court Inspector's books. Nothing hereinbefore laid down shall interfere with any special directions of law for the attempted realization of fine by distress or otherwise before carrying out any sentence of imprisonment upon the offender.

9. When a warrant for realization of a fine is received from the Sessions or any other Court not under the control of the Magistrate of the District, the fine shall be entered in the register and shall be treated in all respects as a fine imposed by the Magistrate of the District which the offender has declined to pay, and for the realization of which a warrant has issued. But such entries may be conveniently distinguished by having prefixed to them in red ink the letters S. or H. C. for Sessions or High Court.

10. All fines received by the Court Inspector must be paid in by him daily to the treasury. The challan sent with them should be in detail and accompanied by the Fine Register, and the Treasury Mohurrir receiving them will check each entry in the challan by the Register of Fines, putting his initials to each in the proper column of the register.

11. The challan receipted by the Treasury officer will be kept filed by the Court Inspector as his acquittance.

12. It shall be the duty of the Fine Mohurrir of each Court to examine daily the Court Inspector's register, and to ascertain that each entry is made, and made correctly. He will certify this by his initials in the proper column. He is also responsible for the speedy preparation of warrants. It is the duty of the Fine Mohurrir of the principal Court, *i. e.*, the Magistrate's own Court at a Sudder Station and Sub-

Divisional officer's Court, where there are more than one at a Sub-Division, to check the Court Inspector's monthly Statements and the totals in the cash columns of the register. Each Magistrate should examine the Fine Register daily and check his own fines, signing his initials to each entry. He should see that warrants are issued and remittances paid in and acknowledged without delay.

13. The Magistrate of the District or officer in charge of a Sub-Division should also inspect the register from time to time, watch the action of his subordinates, and check the Court Inspector's totals at the close of each month.

14 When any fine or part of a fine is remitted in any month subsequent to that in which it may have been imposed, whether on appeal or otherwise, or becomes irrecoverable in consequence either of the lapse of six years from date of sentence, or imprisonment having been suffered in lieu of fine, it shall be entered in the register in red ink under the month in which it is so remitted or lapses and the amount remitted or lapsing shall be shown in column 8 of the register When a fine is remitted in the same month in which it may have been imposed, the entry in column 8 will be made opposite the original entry and of course in black ink.

15. If a fine be not realized in whole or in part in the month in which it is imposed, the whole fine or any outstanding balance of it (as the case may be) shall be entered in red ink under the month in which any part of it may be realized, a reference being made in the Remarks Column to the months and numbers of any former entries of the fine. Similarly all subsequent realizations of the fine should be entered against the original entry in the Remarks Column. Subsequent realizations during the same month in which the fine was levied may of course appear in black ink in the proper columns opposite the original entry, a total being struck in the body of the page.

16. The totals of the red and black ink entries in columns 6, 8, 12, 13, and 14 must, at the close of the month, be found both separately and together on each page, and carried on thus to the end of the month but no further, *e. g.* :—

Total of black ink entries	22	0	0
Total of red ink entries	10	0	0
Grand Total	32	0	0

17. If the Court Inspector be required to meet any contingent or other expenses of the Court, he must receive special advances for this purpose. The account of these must be kept quite distinct from the fines accounts, and in no case is any disbursement to be made from realized fines in the Court Inspector's hands. Any refunds of fines will be made by the Treasury officer on the order of the Magistrate.

18. In the same way when all or any part of the fine is directed to be paid to complainant as compensation, this fact and the amount awarded must be noted in red ink in the 'Remarks' Column of the Register, but, after the realization of the fine is reported by the Court Inspector, the disbursement of the compensation will in every case be made from the Treasury on the Magistrate's order. Fines under S. 209

Ch XXVIII of the Criminal Procedure Code will be treated as if imposed in a case instituted on complaint by the original defendant.

S. 387. 19. In non-appealable cases, however, should the Court Inspector report that the fine or amount of award under S. 209, Criminal Procedure Code, has been paid to him before the parties leave the Court, the Magistrate may direct payment to be made to the person entitled to compensation from his permanent advance, such payment being afterwards adjusted at the Treasury against the Fines Account as though originally disbursed there. In all other cases the Magistrate will give an order on the Treasury for the amount as prescribed by Rule 18.

20. In Sub-Divisions where there is no Sub-Divisional Treasury, and the fine collections remain in the Court Inspector's hands till the close of the month, payment of compensation, where this can legally be given, may be made by the Court Inspector on the Magistrate's order in any case in which the fine has not formed an item in a challan to the District Treasury. Where the fine has been challaned, the Magistrate may order payment of the compensation from his permanent advance, adjusting it afterwards as prescribed in Rule 19. In these Sub-Divisions, however, column 14 of Register A should be sub-divided so as to show separately amounts paid by Court Inspectors as compensation out of realized fines and amounts remitted to the Treasury.

21. A monthly balance sheet should be prepared in a book for the purpose, showing

Grand balance of fines outstanding .....

Amount imposed during month, *i. e.*.....
Total of black ink entries in column 6.....

Grand total realizable.....

Amount remitted on appeal, &c., or written off by Commissioner's order, *i. e.*, Grand Total of column 8.....

Amount realized—
Of new fines—
i. e., Total of black ink entries in column 12 .....
Of old fines—
i. e., Total of red ink entries in ditto .....

Grand Total (of column 12).....

Balance—
Of new fines—
i. e., Total of black ink entries in column 13 .....
Of old fines—
i. e.. Total of red ink entries in ditto .....

Grand Total (of column 18) .....

The grand balance outstanding at close of previous month, less the total of red ink entries in columns 8 and 12, and plus the black ink

entries in column 13, will give the grand outstanding balance of the present month. Ch XXVIII

A certificate to the following effect should be given at foot:— S. 387.

"Certified that the total of the above realized fines has been brought to credit in the Treasury accounts."

Magistrate.

Initial of Treasury officer.
" " Court Inspector.
" " Fine Mohurrir.

22. A copy of each Sub-Divisional Balance Sheet must be sent to Magistrate of the District within two days after the end of month, and the Balance Sheet of the Sudder Station ought to be ready within the same time.

23. A general District Balance Sheet must be sent to Commissioner within ten days of the close of the month.

24. The above would seem to be sufficient check upon the Court Inspector's Department, if properly carried out. But under the Penal Code fines may be realized any time within six years, or during the term of imprisonment of the offender, if this be more than six years. It is requisite therefore that at each Thannah a Register, in form B, be kept of all warrants received for realization of fine within its jurisdiction. Whenever a balance is left unrealized it is the duty of the Police to institute periodical inquiries as to the acquisition of property by the defaulter. The fact and result of making these inquiries should be entered in the column of Remarks at least once a quarter.

25. The inquiries should not, in the first instance, be made in any formal or official manner, but the officer in charge of a Police station, when visiting villages or receiving reports from Rural Police, should inquire from time to time verbally as to the position and occupation of any defaulter resident within his jurisdiction. If it shall appear that such defaulter can in all probability pay the amount of fine outstanding against him, the Police officer shall forthwith report the matter to the Magistrate having jurisdiction, with a view to the issue of a warrant. In all other cases he will merely note "no assets" in the Remarks column, dating the entry.

26. The Magistrate should, in every case, exercise a sound discretion as to the issuing or refusal of warrants; and may, if he think fit, order a local inquiry to be made by a superior officer of Police before granting such.

27. The inquiries provided for under Rules 24, 25, and 26 may be made by a Head Constable under the immediate orders and supervision of his superior officer. A Head Constable employed on this duty should always receive precise instructions as to the cases to be inquired into, and mode of his inquiry.

28. Warrants of this description subsequent to the first must be entered in the Thannah Register in red ink, but be treated as a fresh entry, a reference being made in the Remarks column to the year and number of the original warrant.

29. In the event of the death of a defaulter being reported, one final and formal inquiry should be made as to whether he has left anywhere any property of any kind liable for his debts.

30. All fines realized should be remitted with the returned warrant to the Court Inspector at once.

Ch XXVIII — S. 387.

31. The Magistrate should call for the Register of each Thannah at least once a quarter, and have it compared with the Court Inspector's Register. He should also note that the Police inquiries have been regularly made and properly recorded.

32. The Commissioner on his annual tour of inspection or at such other times as he may deem fit, should examine the Fine Registers and give orders for the writing off of all fines which, in consequence of the death of the defaulter or of its having been ascertained after repeated inquiry that there are no assets, may be irrecoverable.

See Tables A and B, p. 381.

The MADRAS HIGH COURT has prescribed the following

STATEMENT OF FEES, FINES, AND PENALTIES.

Statement of Fees, Fines, Penalties, &c., levied in the Judicial Magisterial Courts in the Zillah of in the month of 18 .

Nature of sums levied.	Civil Court.	Small Cause Court.	Principal Sadr Amins' Courts.	District Moonsiffs' Courts.	Magistrates'.	Total.
Stamp duty on unstamped or insufficiently stamped documents.						
Penalties on documents.						
Fines and Forfeitures.						
Sale proceeds of unclaimed property.						
Court Fees Stamps.						
Process Service Fees.						
Total ...						
Refunds						

A.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Consecutive No. in month.	No. of Case.	Name of Officer imposing.	Name and place of residence of offender, and offence.	Date of sentence.	Amount of fine.	Imprisonment in default.	Amount remitted or written off.	Date of issue of warrant.	Thannah to which issued.	Date of return of warrant.	Amount realized, and date of realization.	Balance.	Amount paid into Treasury, and date of payment.	Signature of Treasurer.	Signature of Court Inspector.	Signature of Fine Mohurrirs.	Signature of Magistrate.	REMARKS.

B.

1	2	3	4	5	6	7	8	9	10	11	12
Consecutive No. in year.	No. of warrant.	Officer issuing.	Name and place of residence of offender, and offence and date of sentence.	Amount for which warrant is issued.	Date of warrant	Date of its receipt.	Date of its return to Head-Quarters.	Amount realized and remitted.	Date of remittance.	Balance of fine outstanding.	REMARKS.

The following register of fines has been ordered to be kept up in the several Courts in BOMBAY :—

With reference to the Circular, Criminal, Chapter I, No. XIV, page 44, a register of fines is to be kept in the Courts of the Magistrates and Sub-Magistrates in the accompanying form. The register should commence from 1st January 1871, and a fresh register be opened at the commencement of each calendar year :—

Register of Fines in Criminal Cases in the Court of *for the year*

Calendar No.	Name of Prisoner and place of Residence.	Nature of Offence and Section.	Punishment.	Date of Sentence.	Realizations												Balance at the end of the year.	Remarks.
					January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.		
					Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	
		Balance of former	years ...	.....	...	...		...	..	..	...	.	...	...	..	...	...	58	
65	Jummuna bin Raippa of Arbharee.	Theft in dwelling-house, under Section 380 of the Indian Penal Code.	Balance of fine, Rs. 50.	5th November 1865.	10	.	...	..		..	.	.	...		...	40	50	...	
			Total, including	former balances	..	...	...	.	...	.	..	..	...	..			...	108	
		Current Year.																	
1	Mahomed Wullud Sulemon of Gokah.	Causing hurt, under Section 323 of the Indian Penal Code.	20 Rupees fine, or in default to undergo 8 days' imprisonment.	5th January 1871	15	.	.	.		...	.	...		...	...	...	15	5	The complainant was paid Rs. 10 out of the fine, and the balance credited.
				Total...	..	.	.	..		..	...		.	...	...	.	...	113	

NOTE.—The register in this form should be kept for each calendar year. When a new register is commenced, cases in which fines still remain unrealized should be entered before the cases of the current year. The balance of fines unrealized need not be entered when the limit prescribed in S. 70 of the Indian Penal Code has expired.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

(Act IV, 1877, S. 185.)

S. 388 makes no provision for a proportionate reduction of the imprisonment in default of payment of fine where only a portion of the fine has been realized. S. 69, Penal Code, however, declares that, if, before expiration of the term of imprisonment in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered on default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

(S. 307, last para.)

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

(S. 302A, cl. 2.)
(Act XI, 1874, S. 32.)

The Whipping Act (VI of 1864), Ss. 2, 5, declares for what offences and under what circumstances sentence of whipping may be passed as a sole sentence.

Execution of sentence of whipping, in addition to imprisonment.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence

Ch XXVIII S. 391.

is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

(S. 310.)

"Whipping in addition to imprisonment." This should be read with the Whipping Act (VI of 1864) Ss. 3, 4, and does not refer to a case in which for a second offence on the same trial sentence of whipping is passed.—Mad. H. Ct., Nov. 28, 1878 Weir, 240.

A prisoner was sentenced on three separate convictions: *first*, to a term of imprisonment; *second*, on expiry of that term to whipping; *third*, to a term of imprisonment after the execution of the previous sentence of whipping. It was held by the Madras High Court that any postponement of execution of a sentence of whipping except under S. 391 was illegal, and the sentence of whipping was accordingly set aside as bad in law, the second sentence of imprisonment being ordered to follow on expiry of the first sentence.—Mad. H. Ct. Pro., Dec. 10, 1873; 7 Mad., xxix, *App.* But if he escapes from Jail during the fifteen days during which execution of the sentence of whipping is suspended, the whipping may be inflicted on his recapture. Mad. H. Ct. Pro. Aug. 10, 1874; Weir, 237. A direction on the warrant of sentence that the whipping shall be inflicted immediately on expiry of the sentence of imprisonment is illegal. The officer in charge of the Jail on receiving such a warrant should return it for correction. When such an illegality has been committed, the whipping may be inflicted on receipt of the order of the High Court correcting it. Mad. H. Ct., Jan. 31, 1877; Weir, 238.

If through neglect or accident or wilful breach of duty the whipping is not inflicted as directed by S. 391, the convict is not thereby freed from liability. The sentence there subsisting must be executed.—Bomb. H. Ct., Aug. 5, 1878. But *contra* Madras Court; where a sentence of whipping directed that it should be inflicted at the expiry of the sentence of imprisonment and the term specified in S. 391 had passed, that sentence was held to be inoperative by lapse of time, and was cancelled.—6 Mad., xxxviii, *App.* Pro. Nov. 13, 1871; and Mad. H. Ct. Pro., Dec. 10, 1873; 9 Mad. Jur., 104. See also *In re* Jaffir Ali, 20 W. R., 70. But where a Sessions Judge sentenced a convict to one year's rigorous imprisonment and to receive thirty stripes, one week before his release, the High Court ordered the whipping to be inflicted at once, as the postponement of it was opposed to the Whipping Act.—Bomb. H. Ct., Jamalvalad Nanabhai, Dec. 22, 1870.

It should be noted, that, under this Code, in a case in which sentence of whipping *only* is passed by a Magistrate of the first class, there is no appeal.—Ss. 273, 274. An appeal, however, lies against,

sentences of whipping passed by Magistrate of the second class; but, if the whipping be awarded in lieu of any other punishment, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of a sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—Cal. H. Ct., 1864, 314.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

In no case shall such punishment exceed thirty stripes.

Limit of number of stripes.

(Ss. 311, paras. 1, 2.)

Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code. Whipping Act (VI of 1864) S. 5.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely) :—

Not to be executed by instalments.

Exemptions

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

(S. 312, para. 3.)

(*c*) is new.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

Stay of execution.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

(S. 312, paras. 1, 2.)

S. 390 directs that a sentence of whipping shall be executed at such place and at such time as the Court may direct: the Lieutenant-Governor of Bengal has ordered that where whipping is the sole punishment awarded, officers should make arrangements for having it carried out at once at the Magistrate's office in communication with the Civil Surgeon or Native Doctor of the station.—Cir. 21, Jan. 1876.

The Governor-General of India in Council has notified that he considers that the precaution of having a Medical officer present at the time of the infliction of the punishment should be observed in every instance when practicable.

A Medical officer, during execution of a sentence of whipping, certified that the accused was not in a fit state to undergo the remainder of the sentence, which was accordingly stayed, and the prisoner who had been sentenced only to whipping was discharged by the Magistrate. On a reference to it, the Calcutta High Court approved of the Magistrate's proceedings.—3 Wyman, 3, *Letters*. See also 3 Mad., i, *App.* Pro. July 25, 1864. The prisoner should not necessarily be discharged though he cannot suffer the remainder of the sentence of whipping; see S. 395.

Procedure if punishment cannot be inflicted under section 394.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented, from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

(S. 313.)

S. 395 does not enable a Court to sentence an offender to fine if he cannot suffer the sentence of whipping originally passed.

Execution of sentence on escaped convicts.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say :—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

(S. 316.)

S. 224, Penal Code, provides the punishment for an escape or an attempt to escape by a convict.

A sentence of solitary confinement may be passed by any Court or any person who is convicted of an offence for which the Court has power to sentence him to rigorous imprisonment. S. 73, Penal Code.

The attention of all Sessions Judges and Magistrates in Bengal has been drawn to the special requirements of S. 396, and they have been directed to specify in the warrants of sentence the date from which a sentence is to take effect, whether at once or after the lapse of a period equivalent to a portion of the prisoner's original sentence which remained unexpired at the date of his escape, the date on which the original sentence, of which the currency was interrupted by the escape, will expire being clearly shown.—Cal. H. Ct. Cir. 9, July 15, 1873.

Ch XXVIII — S. 397.

The Governor-General in Council is pleased to direct that, in modification of the Circular of the 22nd November, the following procedure be observed upon the re-capture of a convict, if the Local Governments see no impediment. The Police, who have arrested a person upon the charge of having escaped, will apply to the Magistrate before whom the accused has been brought for an adjournment, to enable them to ascertain whether a warrant has been received from Port Blair for his re-capture. Inquiry should be made at the Home Department of the Government of India, if no warrant has been received by the Police of the province in which the convict has been arrested. And in all cases of escape by a life convict, the Superintendent of Port Blair or other Magistrate having jurisdiction, as soon as the fact of escape is known, should issue a warrant charging him with having committed an offence under S. 224, Penal Code, to the chief of the Police of the province or administration in which the convict is known or is likely to be found, and should also forward a warrant forthwith to this department. If the warrant is forthcoming, the Magistrate by whom the case is being inquired into will decide whether there is any reason why the accused should not be removed in custody, under Ss. 85, 86, Criminal Procedure Code, to the Magistrate at the Andamans who issued the warrant.—Orders of Govt. of India, Home Dept. dated May 18, 1874, circulated by Govt. of Bengal, Cir. 22, dated May 27, 1874.

The Calcutta High Court has held (480, 1864) that S. 396 does not apply to the escape of a person from the custody in which he may have been detained when under trial. Such an escape is punishable under S. 224, Penal Code.

Sentence of offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

(S. 317.)

Where the first sentence is set aside on appeal or revision, the second sentence which was to take effect on expiration of the first commences from that time, it being immaterial whether the first sentence has been executed or been set aside by a superior Court. Bomb. High Court, *Resn. in Chambers*, April 29, 1879.

When a sentence of imprisonment is passed on a person who had just been convicted and sentenced for another offence, it is contrary to S. 397 to make the second sentence concurrent with the first.—Bomb. H. Ct. *Resn. in Chambers*, Aug. 3, 1869.

In ignorance that the person under trial before him was already under sentence in Jail, a Magistrate convicted and sentenced him, dating the warrant irrespective of the previous sentence. The Calcutta High Court (3 W. R., 16. C. L.,) held that the Magistrate was competent to alter the date of the warrant, as the alteration referred only to the time at which the sentence should commence, and not to the sentence itself.

The terms of S. 397 seem to make any such alteration in the warrant unnecessary, as the second sentence, it is enacted, "*shall* commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced" except under circumstances specially provided for.

Saving as to sections 396 and 397.

398. Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(S. 317, Proviso.)

Confinement of youthful offenders in reformatories.

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

(S. 318.)

Act V of 1876 relates to Reformatory Schools.

S. 7 of that Act provides that whenever any youthful offender, that is, any person under the age of sixteen years, is sentenced to transportation or imprisonment and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall not be less than

Ch XXVIII — S. 400.

two years and not more than seven years, and shall be in conformity with any rules made under section twenty-two, and for the time being in force. The powers so conferred by the Court shall be exercised only by (*a*) the High Court (*b*) the Court of Session (*c*) a Magistrate of the first class (*d*) a Magistrate of Police or a Presidency Magistrate in the towns of Calcutta, Madras and Bombay.

S. 8 further enacts that whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such Jail is situate; and the Magistrate if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and be there detained for a period which shall not be less than two and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force. In this section a Magistrate means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.

Nothing contained in sections 7 and 8 shall be deemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

In directing that a youthful offender under sentence of imprisonment should be sent for detention in a Reformatory School, the period of that detention should not be fixed with reference to the sentence of imprisonment, but rather to the circumstances of the case and the age of the youthful offender, as detention in a Reformatory School is not a punishment equal in severity to imprisonment in a Jail, and a sufficient term of such detention is necessary to effect any reform in his habits and to teach him some trade or profession likely to enable him to earn an honest livelihood on his release.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

(S. 305.)

See Act V of 1871, APPENDIX.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

(S. 322, paras. 1, 2.)
(Act XI, 1874, S. 34.)

Para. 2 is new.

S. 23, Act V of 1871, empowers the Governor-General in Council to "grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, and upon such condition as to the Governor-General in Council seem fit;" and Ss. 25—29 contain the law for the

Ch. XXIX. — S. 402. — Ch. XXX. — S. 403.

revocation of such license and the procedure to be taken on breach of any of the conditions thereof.

In the Panjab, applications under S. 401 should be submitted to Government through the Chief Court in order to prevent the possibility of that Court hearing in appeal a case in which Government has remitted or commuted the punishment.—Smyth, p. 117.

Power to commute punishment.

402. The Governor General in Council, or the Local Government, may without the consent of the person sentenced commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(S. 322, para. 3.)

Ss. 54 and 55 of the Indian Penal Code confer similar powers on the Government of India, or the Government of the place in which the offender shall have been sentenced, with respect to the commutation (S. 54) of a sentence of death to any other punishment under that Code, and (S. 55) of a sentence of transportation for life to imprisonment, rigorous or simple, for a term not exceeding fourteen years.

CHAPTER XXX.

Of previous Acquittals or Convictions.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such

act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

(S. 460.)

In reading this section the terms of the penultimate para. of section 4 should be borne in mind "Words which refer to acts done extend also to illegal omissions."

Ch. XXX.

S. 511 provides special means for proving a previous conviction or acquittal.

S. 403.

S. 210 provides that where, after conviction on one out of several charges against the same person, the complainant or officer conducting the prosecution, with the consent of the Court, withdraws the remaining charge or charges, such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction be set aside, in which case the inquiry or trial of the charge or charges so withdrawn may proceed.

Similarly S. 494 declares that if the Public Prosecutor, with the consent of the Court withdrew from the prosecution of any person in cases tried by Jury before the return of the verdict and in other cases before the judgment is pronounced such person shall be acquitted if such withdrawal is made after a charge has been framed or when no charge is required on withdrawal of the complaint by the complainant in a summons case, the Magistrate shall acquit the accused. S. 248.

If in the course of the trial of a summons-case the complainant does not appear the Magistrate shall ordinarily acquit the accused. S. 247.

The compounding of an offence under S. 345 has the effect of an acquittal of the accused.

When a Jury is discharged in a trial before a High Court because six persons out of nine do not agree in opinion or because the Judge disagrees with such majority, if the Judge considers that there should be no re-trial he shall make an entry to that effect on the charge, such entry operating as an acquittal. S. 308.

The previous conviction or acquittal must have been on a trial held by a Court having jurisdiction over the offence charged.—Muthoora Prashad Panday, 2 W. R., 10.

The previous conviction or acquittal must be in force, that is, it must not have been subsequently set aside by a Court of Appeal or Revision. So it was held that the reversal of a conviction on the ground of misdirection to the Jury is no bar to a fresh trial—Kali Churn Gargooly, 7 W. R, 2; also when, in the previous trial by the Court of Session, the proceedings had been quashed as irregular or illegal.—Wahid Ali, 3 W. R., 42.

The following remarks made by Peacock, C. J., in the case of Dwarkanath Dutt, 7 W. R, 15, are important in connection with this section:—

When a former conviction or acquittal is set up as a bar to a subsequent trial, the Court before which the second trial is held has nothing to do with the evidence given on the former trial, except for the purpose of ascertaining whether the offence which formed the subject of the first trial is the same as that which forms the subject of the second charge. If the offence is the same, the former conviction or acquittal is a bar to the second trial, whether the second Court considers that the former conviction or acquittal was warranted by the evidence given on the first trial or not. If the offence is not the same, the former conviction or acquittal is no bar to the trial upon the second charge, notwithstanding the evidence given in the two cases is the same, and the Court, whether the same as that which tried the prisoner for the first offence, or a different Court, is bound to apply its own judgment to the evidence

before it, and to give a verdict according to its own conviction upon the evidence adduced. It appears to me that two distinct offences cannot be converted into one such offence by reason of any evidence which the prosecutor may think fit to adduce upon the trial for one of them. For instance, upon an indictment for murdering A, it would be no answer that the prisoner had been acquitted upon a trial for murdering B, unless it could be shown that the two charges related to the same person under different names. If it were shown that A and B were two different persons, as for instance that A was a man, and that B was a woman, no amount of proof as to what evidence was given on the trial for the murder of A could show that the offences were one and the same, so as to render the acquittal as to A a bar to the charge of murdering B.

Where a complaint was made to the Police of the commission of two offences, one cognizable, the other non-cognizable and the Police after investigation reported that the former was not established, on which the Magistrate ordered it to be expunged from his register, it was held that there was no bar to the trial of that offence.—Govt. of Bombay *v.* Shidapa, I. L. R., 5 Bomb., 405.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

Of Appeals.

An appeal may be presented by any person authorized by the appellant to present it, not necessarily by a Pleader. Sabha Aitala and another, I. L. R., 1 Mad., 304.

The following periods of limitation are prescribed by Act XV of 1877, Sch. II for the presentation of Criminal appeals

From a sentence of death passed by a Sessions Judge	seven days	from the date of sentence Art. 150
Against a sentence or order appealed against presented to the High Court	sixty days	from the date of sentence or order Art. 155
to any other Court	thirty days	as in Art. 155 Art. 154
From an order of acquittal	six months	from the date of the judgment appealed against Art. 157.

Unless the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within the prescribed periods, it shall be dismissed. Ss. 4, 5.

If the Court is closed on the last day in which an appeal may be presented, it may be presented on the day that the Court re-opens. S. 5.

In computing the period of limitation the day from which such period is to be reckoned shall be excluded, also the time requisite for obtaining a copy of the sentence or order appealed against. S. 12.

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

(S. 286.)

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

S. 89 relates to the appearance of a person whose property has been attached or sold in consequence of its being supposed that he has absconded or is concealing himself to avoid execution of a warrant of arrest. Such a person, on his appearance within two years from the date of the attachment, and on proof that he did not so abscond or conceal himself, or that he had no notice of the attachment sufficient to enable him to attend within the specified time, is entitled to obtain restoration of the property, or if it or any portion of it has been sold, the nett proceeds of the sale after deducting the costs of attachment. An appeal lies against a refusal to comply with such an application.

Appeal from order requiring security for good behaviour.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

(S. 267.)

In addition to his powers as an Appellate Court, the District Magistrate can at any time order the discharge of any person imprisoned on default of giving security for good behaviour by order of any Magistrate in the District. S. 124.

Appeal from sentence of Magistrate of the second or third class.

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

(S. 266, S. 47, para. 2.)

All orders passed by a Magistrate of the second or third class under S. 514 forfeiting a bond are appealable to the District Magistrate, or, if not so appealed, may be revised by him. S. 515.

A case dealt with under S. 349 and here referred to would be when a Magistrate of the third class having jurisdiction to hold the trial is of opinion that the accused is guilty but that the sentence which he can pass is inadequate. The case would in a Subdivision be then referred to the Subdivisional officer, and if he is of the second class and convicts, the sentence would be appealable as if it had been passed in a trial held by such officer.

In the N. W. Provinces all Joint and Assistant Magistrates and Assistant Commissioners holding their Courts at the Head-Quarters of a District, being Magistrates of the first class, and next in seniority to the Magistrate of the District, have been vested with powers under S. 407 to hear appeals, such powers to be exercised only during the absence from Head-Quarters of the Magistrate of the District.—*Gaz.*, 1873, p. 903.

In Sindh, Magistrates of the first class in charge of Divisions of Districts have been empowered to hear appeals under S. 407.—*Bomb. Gaz.*, 1873, p. 255.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court,

but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

(Ss. 269, 270, 79.)

An order passed by a Magistrate of the first class under S. 514 forfeiting a bond is appealable to the District Magistrate, or if not so appealed, may be revised by him. S. 515.

When the person sentenced is an European British subject, the sentence is always appealable (S. 416). In other cases no appeal lies against a sentence passed by any of the officers specified in S. 408 if the sentence be one of imprisonment only, not exceeding three months, or of fine only, not exceeding two hundred Rupees, or of whipping only, S. 412; nor if the conviction be by a Magistrate in a summary trial, if the sentence be one of imprisonment only, not exceeding three months, or of fine not exceeding two hundred Rupees, or of whipping only. S 413.

A sentence passed under S. 349 would be in a case tried by a Magistrate of the second or third class having jurisdiction and submitted by him to a superior Magistrate because he cannot pass an adequate sentence.

Every sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge (S. 31, para. 3.) or a District Magistrate specially empowered under S. 34, is subject to the confirmation of the Sessions Judge, and is thereupon appealable to the High Court after the case has been disposed of by the Court of Session.

Appeals to Court of Sessions how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

(Ss. 80, 270, para. 3; S. 271.)
(Act XI, 1874, S. 22, cl. 1.)

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

(Act IV, 1877, S. 167.)

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

(S. 273, last para.)

From this it would seem that an appeal could lie against a conviction by any Magistrate even a District Magistrate exercising special powers under S. 34 when the accused has pleaded guilty although such an order passed by an Assistant Sessions Judge would not be appealable because he is a Court of Session.

Where in a Municipal prosecution which the law requires to be made within a certain time, the accused pleaded guilty and was convicted, he was not allowed on appeal to plead that the prosecution was invalid because instituted out of time. The appeal would lie only with respect to the sentence irrespective of the conviction and not against the legality of the conviction.—Jaffir M. Talab, I. L. R., 5 Bomb., 685.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

(S. 273, paras. 1, 2.)

Every sentence passed on conviction of an European British subject is appealable at his option to the High Court or Court of Session (S. 408) S. 413 does not apply to such a case. S 416.

Jurisdiction over the appeal of one person does not give a Sessions Judge constructive jurisdiction over the convictions of other prisoners whose sentences may not be appealable.—Cal H. Ct, 922, 1864; Kalubhai Meghabhai, 7 Bomb., 35, *Crown Cases*; Mad. H. Ct., Pro., May 10, 1872, 7 Mad. Jur., 301.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate

No appeal from certain summary convictions.

empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

(S. 274, para. 1.)

[1] This section does not apply to sentences passed on European British subjects (S. 416) which are always appealable. S. 408.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

(S. 274, para. 2.)
(Act XI 1874, S. 74.)

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

(S. 274, para. 3.)

Sentences passed on European British subjects are consequently always appealable either to the High Court or Court of Session at the option of the person sentenced. S. 408.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(S. 272.)

A special limitation of six months is provided for such an appeal.—Act XV of 1877, Sch. II, Art. 157.

Public Prosecutors are appointed by the Governor General in Council or the Local Government generally, or in any case, or for any special class of cases, in any local area. S. 492.

The Sessions Judge should send the Divisional Commissioner any

SECRETARIAT LIBRARY

records of a criminal trial that he may require to satisfy himself whether Government should be moved to direct an appeal against the original or appellate judgment of acquittal.—Cal. H Ct. Cir. 1, Jan. 12, 1877.

A clear statement of the circumstances which are considered to justify an appeal with the point or points on which it should be preferred should be sent to Government.—Gov. Bengal Cir. 19, March 19, 1875.

The verdict of a jury acquitting on certain charges but convicting on others, if accepted by the Sessions Judge is appealable as a judgment of acquittal on those charges. Thus where the Jury acquitted of murder but convicted of culpable homicide not amounting to murder, and the prisoner was sentenced accordingly, an appeal against the verdict of acquittal of murder was heard, and the prisoner was convicted and sentenced to death.—Empress *v.* Juddonath Gangooly, I. L R., 2 Cal., 273

In considering an appeal by Government against an order of acquittal, it is not for the High Court to say whether if it had been trying the case, it might not have taken a view opposed to that of the Lower Court. That is not the test to be applied to determine such an appeal. While the High Court fully recognizes the necessity for the existence of such powers in the Local Government in this country, it is equally clear that those powers should be most sparingly enforced: and, in respect to pure questions of fact, only in those cases where through the incompetence, stupidity or perversity of a subordinate tribunal, such unreasonable or distorted conclusions have been drawn from evidence as to produce a positive miscarriage of justice. It is not because a Judge or Magistrate has taken a view of the case in which the Government does not coincide, and has acquitted the accused persons that an appeal from this decision must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice by putting in force the arbitrary powers conferred by S. 417. The doing so should be limited to those instances in which the Lower Court has so obstinately blundered and gone wrong as to produce a result mischievous alike to the administration of justice and the interests of the public. The Sessions Judge in the present case has had the witnesses before him, and consequently the best opportunity of judging their truth, and he appears to have conducted the inquiry with care and patience, and to have weighed and considered the facts to the best of his ability. It may be, that the High Court may have arrived at a different view, but holding this decision to be an honest and not unreasonable one of which the facts were susceptible, the High Court unhesitatingly dismissed the appeal.—Empress *v.* Gayadin, I. L. R., 1 Cal., 148.

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

EXPLANATION.—The alleged severity of a sentence

shall for the purposes of this section be deemed to be a matter of law.

(S. 271, last para.)
(Act XI, 1874, S. 22.)

The Local Government is empowered to direct what cases before any Court of Sessions shall be tried by jury, but if the accused is charged at the same trial with several offences, some of which are and some are not triable by jury, he shall be tried by jury for all such offences. S. 269. If an offence triable with the aid of assessors is tried by jury, the trial shall not on that ground only be invalid, (S. 536), but it is doubtful how far such an irregularity would deprive the accused of a right to appeal on a matter of fact such as he would have had unquestionably if the trial had been properly held with the aid of assessors. See Mohim Chunder Lall and another, I. L. R., 3 Cal., 763; (S. C.) 4 Cal., L. R., 405, in which Maclean, J. held that such a person would still be entitled to an appeal on the facts.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

(S. 275.)

If the appellant is in Jail his petition of appeal may be presented to the proper Appellate Court through the officer in charge of the Jail, S. 420; and it is exempt from stamp duty.—Court Fees Act (VII, 1870) S. 19, cl. xvii.

S. 367 declares what a judgment shall contain and under S. 371 on the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court shall be given to him without delay, and, except in summons cases, free of cost. If the trial has been held by Jury, a copy of the heads of the charge shall be given to him free of cost. S. 371.

The practice of furnishing to the person affected and sending up to the Appellate Court a copy of the sentence only with the petition of appeal is not in compliance with the law.—Cal. H. Ct. Cir. 2, June 8, 1874.

The petition of appeal against the verdict of a Jury should state specifically in what respect the law has been contravened.—Gopal Bhereewalla, 1 W. R., 21.

The time requisite for obtaining a copy of the sentence or order appealed against shall be excluded in computing the period of limitation prescribed for an appeal.—Act XV, 1877. S. 12.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Procedure when appellant in jail.

(S. 277.)

A petition of appeal presented by a person under duress or restraint of any Court or its officers is exempt from stamp duty. Court Fees Act (VII, 1870), S. 19. cl. xvii.

Officers in charge of Jails are required to give all proper facilities for drawing up petitions of appeal, or for getting them drawn up by other prisoners, or by their legal advisers or friends. It is, however, no duty of the Jail establishment to draw up such petitions—Govt. Bengal 2031, June 16, 1870. The fullest opportunity should be given to prisoners to execute powers of attorney to whomsoever they please, and without reference to the mode or circumstances by which they might be influenced to do so.—Sheikh Dadabhai, 1 Bomb., 16.

The Calcutta High Court has, by its Circular 9, August 7, 1867, laid it down, as a general rule, that petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, shall be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance and in the following form to the Judge whose sentence or order is appealed against.

Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but should be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation.

To

THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the officer in charge of the Jail, and has been forwarded to the High Court, as required by S. 420 of the Code of Criminal Procedure.

_____,

Officer in charge of the Jail.

As a general rule the Sessions Judge should, on receipt of this notice forward the record to the High Court, but whenever public inconvenience would arise from this, he should forward in the first instance a certified copy of his reasons (S. 464) for making or passing such sentence or order, stating at the same time why the original record has not been sent.—Cal. H. Ct. Cir. 5, May 28, 1868.

No petition of appeal or revision shall be admitted by any Criminal Court unless it is either submitted through the District or Jail authorities or presented by the convicted person himself or by some one authorised by power of attorney to present it on behalf of the convicted

Ch. XXXI. — S. 421.

person.—Smyth, p. 102. Along with the petition of appeal and copy of the judgment, the Deputy Commissioner should forward to the Appellate Court the files of the case, so that the appeal may be disposed of with as little delay as possible. When the appeal lies to the Chief Court, the Deputy Commissioner should forward the file in his office through the Commissioner, so that the files of the Sessions Court and of the committing Magistrate may be transmitted together to the Chief Court.—Smyth, p. 103.

But when the order is not appealable, no record should be sent unless specially called for.—Cal. H. Ct. Cir 7, Aug. 12, 1869; 12 W. R., *Crim. Cirs.*, 5; 3 B. L. R., *Rules, &c.*, 11. In such cases also the officer in charge of the Jail should not forward the petition, but should leave the prisoner to move the superior Court by motion in open Court.—Cal. H. Ct. Cir. 8, Aug. 25, 1869; 12 W. R., *Crim. Cirs.*, 5; 3 B. L. R., *Rules, &c.*, 11.

When transmitting a petition of appeal, a Magistrate should forward the record of the case to the Court of Session.—Panj. Ch. Ct. Cir. 22, Oct. 26, 1868.

A petition of appeal must be presented within the period, prescribed by Act IX, 1871, Sch. II, unless the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period, and it must be accompanied by a copy of the sentence or order appealed against, as provided by S. 419 of the Code of Criminal Procedure.—Act IX, 1871, S. 5.

Communications from an officer in charge of a Jail to a Sessions Judge, relative to an appeal made by a prisoner convicted by the latter, should not be made through the Magistrate of the District, but to the Sessions Judge direct.—Cal. H. Ct. Cir. 6, July 2, 1869; 3 B. L. R., *Rules, &c.*, 5.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

(S. 278, paras. 1, 2.)

It is not competent to an Appellate Court to order a convict under sentence of imprisonment to appear in Court —Bomb. H. Ct., Antoine José, Sept. 4, 1869, *Resn. in Chambers*. The proviso to S. 424 of this Code, however, seems to contemplate the exercise of this power in exceptional cases.

When an Appellate Court has rejected an appeal without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of that Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to rehear the appeal on its merits. Such a power should, however, be sparingly used.—Mad. H. Ct Pro., Nov. 7, 1873; 7 Mad., xxix, *App.* (S. C.) 9 Mad. Jur., 58 (S. C.) Weir, 205. But see *contra* Mahomed Yashin, I. L. R. 4 Bomb., 101, where it was held that an order rejecting an appeal was final.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal; and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

(Ss. 62, 269, para. 2; S. 279.)

S. 417 relates to an appeal against an order of acquittal.

A complainant cannot claim a right to be heard in appeal. The matter is one which may be left in each case to the discretion of the Court.—Mad. H. Ct. Pro., Nov. 6, 1874; 10 Mad. Jur. 67; (S. C.), Weir, 207.

Powers of Appellate Court in disposing, of appeal

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, main-

Ch. XXXI. S. 423.

taining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order:

(*d*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

(S. 272, para. 3; S. 280.)

It will be seen that the power of enhancing a sentence on appeal no longer exists. The power of enhancing a sentence is conferred only upon a High Court as a Court of Revision. S. 439. But though an Appellate Court cannot enhance a sentence, it can set it aside and direct a commitment to the Court of Session to be made.

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge or judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of sanction required by S. 195,

or of the omission to nominate jurors or assessors in accordance with S. 324,

or of any misdirection in any charge to a jury; unless such an omission or irregularity, want, or misdirection has occasioned a failure of justice. S. 537.

(*a*) When an appeal is presented against an order of acquittal under S. 417, the High Court may issue a warrant directing that the accused be arrested &c. S. 427.

When an acquittal is set aside on appeal, the sentence passed should commence to take effect from the date on which the prisoner after arrest has been committed to Jail.—Empress *v.* Mohuddi, 6 Cal. L. R. 352, *Foot note.*

(*b*) On the appeal of some of the accused the Appellate Court in acquitting them cannot (unless it be a High Court) set aside the sentences of those who have not appealed. It should refer the case to the High Court (which has the full powers of a Court of appeal subject to S. 537). Mad. Ht. Ct Pro. April 19, 1875; Weir, 219. Application should rather be made to Government in such a case. Sheosurn Singh, Cal. H. Ct. Aug. 16, 1877.

(*d*) The latter part of S. 537 above quoted is especially important in connection with this clause.

The law does not expressly provide for the withdrawal of an appeal and probably now that the power of enhancing a sentence has been

taken away from Appellate Courts, applications for leave to withdraw will not be made. It has been held that an appeal may be withdrawn before an Appellate Court has decided to hear it. *In re* Chunder Nath Deb, 5 Cal L. R., 372. But not after the Appellate Court has heard it. *In re* Dwarka Manjee, 9 Cal. L. R., 427.

Judgments of Subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

(S. 299, paras. 1, 2.)

Cases appealable to the High Court direct from the order of a Magistrate would be appeals against the orders of a Presidency Magistrate or by a Magistrate not in a Presidency-town where the accused was an European British subject. S. 408 (*b.*)

In cases of revision the certificate of the order of the High Court is to be communicated direct to the Court by which the finding, sentence or order revised was passed. S. 442.

As regards the communication of judgment of other Appellate Courts the Calcutta High Court No. 6, July 2, 1869, 2 B. L. R. 5 *Rules* &c. has made the following rule:

An Appellate Court should certify in every case its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of the Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant in writing through the officer in charge of the jail of the result of this appeal.

Suspension of sentence pending appeal.

Release of appellant on bail.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

(Ss. 281, 297, para. 8.)

The following form of warrant has been prescribed by the Calcutta High Court (Wilkins, 67) for the release of an appellant on bail.

IN THE COURT OF THE SESSIONS JUDGE AT

To the Magistrate of the District of

WHEREAS
of an offence under Section of the
Magistrate of on the
day of 18 has been
and on to this

Accused or convicted by or before.

State sentence or period of remand to jail.

Appeal or application.

Court an order has been passed under Section of the Criminal Procedure Code of his release on bail until his shall have been disposed of

Case or appeal.

You are hereby required to release the said
on good and sufficient bail
accordingly .

If the amount of bail is fixed by the Appellate Court, enter it here.

Given under my hand and the seal of the Court, this the
day of 18 ,

Sessions Judge or Magistrate.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

(Act IV 1877, S. 168, para. 3.)

Appellate Court may take further evidence or direct it to be taken.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall for the purposes of Chapter XXV be deemed to be an inquiry.

(S. 282, paras. 1, 3, 4.)

Such evidence would be taken as in warrant cases, in the manner prescribed by S. 356. The Appellate Court is competent to issue a commission for the examination of a witness under the circumstances specified in S. 503.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

(S. 271 B; Act XI, 1874, S. 22.)

Ch. XXXI.

Ss. 430, 431.

Ch. XXXII.

S. 432.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

(S. 285.)

S. 417 provides for an appeal on behalf of Government against a judgment of acquittal passed by an Appellate Court; Chapter XXXII refers to Revision.

Petitions of appeal from prisoners should not be forwarded to the High Court in cases in which sentences or orders have already been passed by an Appellate Court on appeal (as, for example, by a Court of Session on an appeal from a conviction before the Magistrate of the District or other officer exercising the powers of a Magistrate of the 1st class), such sentences or orders being final under section 285 of the Code of Criminal Procedure.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

The death of an offender does not discharge from the liability to pay a fine imposed on him any property which would after his death be legally liable for his debts (S. 70, Penal Code) so that although an appeal shall finally abate on the death of the appellant, and his guilt or innocence may not have been determined by the Appellate Court, the fine will still be capable of realization.

CHAPTER XXXII.

Of Reference and Revision.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

(Act IV, 1877, S. 240.)

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

(Act IV, 1877, S. 241.)

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail,

Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

(Act X, 1875, S. 101.)

This is in accordance with the terms of S. 25 of the Letters Patent of 1865 constituting the High Court of Calcutta, S. 26 of which declares that the Advocate General may certify that there is in his judgment an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law should be further considered on which the High Court shall proceed as set forth in the last para. of S. 434 of the Code. The Letters Patent of the other High Courts are similar in this respect.

435. The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered

Power to call for records of inferior Courts.

Ch. XXXII.

S. 436.

by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

(Ss. 294, 295, para. 1; S. 520.)

It should be noted that the expression "inferior Criminal Court" is used instead of "Subordinate Court" as in S. 294 of the repealed Code of 1872. All Magistrates in the District are Criminal Courts inferior to the Court of Session, but having regard to S 6 which gives the five classes of Criminal Courts, probably only Magistrates of the second or third class would be inferior to the District Magistrate.

S. 143 refers to an order passed to any person not to repeat or continue a public nuisance; S. 144 to summary order for the removal of certain nuisances in cases of emergency; S. 176 to inquests—

These powers should be exercised at all times; not merely on matters coming up in Court but also in matters coming to the knowledge of the particular official on reliable information. Conversation held with an officer employed on Famine duty was considered to be information on which action could be taken.—Mad. H. Ct, Pro. Nov. 21, 1878; Weir, 215.

Criminal proceedings are bad unless they are conducted according to law; and if they are substantially bad in themselves, the defect will not be cured by any consent of the prisoner. It is the duty of Magistrates and all Criminal Courts to follow the procedure provided by law, and there is no law which sanctions their intentional departure from that procedure, and thus attempting to protect themselves against the consequences of such departure by getting the accused to say that he consents to it. There would be an end to all procedure, if such an assent were held to warrant material and important irregularities.—Bholanath Sen, 25 W. R., 57.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magis-

Power to order commitment.

trate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

(S. 296, paras. 1, 2, 3; Act XI, 1874, S. 29.)

The distinction between Ss. 436, 437 should be noted. In a case which the Court of Session or District Magistrate considers to be triable exclusively by a Court of Session instead of directing fresh inquiry, the Court may pass an order directing the accused who has been improperly discharged to be committed for trial (S. 436); but further inquiry may be ordered only into the case of any accused person who has been discharged in any other case (S. 437). No doubt many of these cases may be warrant cases, but some will be cases which though not exclusively triable by a Court of Session would be committed to such Court, if in the opinion of the particular Magistrate a *primâ facie* case be made out. Such cases would be cases of death caused by a blow rupturing the spleen in which, though nothing more serious than hurt or grievous hurt might be established, commitment to the Court of Session has always been considered desirable.

(*a*) This in accordance with numerous decisions of the High Courts. But if the trial has taken place and no failure of justice has resulted from the error, the High Court will not interfere.—Khamir, I. L. R., 7 Cal., 662.

(*b*) In the case of Tarucknath Mookerjee, 10 B L. R., 285, it was held that the words "improperly discharged" referred to some offence for which he was substantially charged in the complaint or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary inquiry for unless this were so a man might be committed for trial of an offence of which he had never been accused or even heard a word until he was apprehended under the Judge's commitment. Such a result could not have been contemplated by the Legislature as the Code was carefully framed with a view to provide that no one shall be committed for trial without having pre-

Ch. XXXII. viously had a fair opportunity of meeting the charge upon which he is to be committed.

Ss. 437, 438. The alteration in the law made by S. 436 of the Code would prevent such a result as before an order of commitment could be passed, the accused must have an opportunity of showing cause why the commitment should not be made, and the Court taking cognizance of the matter may direct the inferior Court to inquire into such offence

A Sessions Judge on hearing an appeal is competent to set aside the conviction and sentence, and direct the appellant to be committed for trial, when he finds that the offence which the appellant apparently has committed is one triable exclusively by a Court of Session. The Magistrate, on receipt of such an order can act on the evidence already taken and make the commitment in the manner prescribed by the Code. Elahi Buksh, I. L. R., 2 All., 910.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

(S. 298; Act XI 1874, S. 31.)

This section goes beyond S. 298 of the Code of 1872 in enabling the Court of Session or District Magistrate to direct further inquiry to be made "into the case of any accused person who has been discharged" which hitherto could be ordered only by the High Court as a Court of Revision.

Report to High Court.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

(S. 296, para. 1.)

The following orders have been issued by the CALCUTTA High Court (Cir. 18, July 15, 1863, Wilkins, 110) regarding the manner in which such references should be made:—

"References under S. 438 shall always be accompanied by the records of the case to which they relate, and by an English letter com-

mencing—'Under S. 438 of the Code of Criminal Procedure, and Circular Order of the High Court, dated 15th July, 1863, No. 18, I herewith transmit the record of the case noted in the margin, to be laid before the High Court with the following report.' There will then be stated—

1*st.*—A brief analysis of the case.

2*nd*—The order of the Lower Court.

3*rd.*—In what particular portion of that order the Court making the reference considers an error on a point of law to exist.

4*th.*—The grounds upon which the order of the Lower Court should be reversed.

"Unless there be any particular reason why delay should be avoided, the explanation of the Lower Court should be called for and accompany the reference.

"The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them.

"It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the the time of the Court be needlessly engrossed by matters not demanding their interference."

All references submitted to the Chief Court, PANJAB, under this section are to be accompanied by the referring officer's opinion, by the records, and a statement of the case in English, giving—

1*st.*—A brief abstract of the case.

2*nd.*—The sentence or order of the Lower Court, and the name of, and powers exercised by, the Magistrate passing it.

3*rd.*—The particular portion of the sentence or order in which an error on a point of law is believed to exist.

4*th.*—The grounds upon which the order of the Lower Court should be reversed or modified.

It should also be noted how much of the sentence the accused has undergone, and, if he has been sentenced to fine or whipping, whether the fine has been realized, or the whipping has been inflicted.—Panjab Ch. Ct. Cir. 5, 1870; Smyth, p. 103; also Bomb. H. Ct., *Gaz.*, 1873, p. 714.

The following Rules have been issued by the MADRAS High Court:—

All references under S. 438 of the Code of Criminal Procedure by Magistrates with full powers should be submitted to the High Court through the Magistrate of the District, unless justice would be defeated by the delay.

The District Magistrate cannot refuse to refer to the High Court a case in which a Divisional Magistrate doubts the legality of the sentence of a Subordinate Magistrate.

A reference under S. 438 should contain the opinion of the officer referring the proceedings and the grounds upon which such opinion is based.

A copy of the proceedings if in English, or if in the Vernacular, an English translation must be sent up with all cases referred to the High

Ch. XXXII. Court under S. 438.—Mad. H. Ct., Feb. 20, 1864; Nov. 14, 1864; Dec. 14, 1866; and July 1, 1868.

S. 439. The fact of there being no evidence to support a conviction is a question of law and affords ground for a reference under S. 296. The fact of the evidence being insufficient is a question of fact, and affords no ground for such a reference.—Mad. H. Ct., Oct. 30, 1867.

Where there is the right of appeal, the High Court will not exercise its extraordinary powers as a Court of Revision until all other remedies provided by law have been exhausted —Rajcoomar Singh, 1 Cal. L. R., 382: Nilambor Baboo, I. L. R., 2 All., 276.

It is not competent to a District Magistrate to invoke the High Court as a Court of Revision because he disapproves of the orders passed by the Sessions Judge as a Court of appeal.—David, 6 Cal. L. R., 245.

High Court's power of revision.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427 and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(S. 297.)

S. 195 relates to the sanction of any Court to prosecute on account of certain offences committed either in contempt of the lawful authority of public servants; or against public justice; or relating to documents given in evidence.

S. 423 to the powers of an Appellate Court to reverse the finding and sentence, and acquit or discharge the accused, or to order him to be re-tried by a Court of competent jurisdiction, or, be committed for trial, to alter the finding, maintaining the sentence, or with or without altering the finding to reduce the sentence, or alter the nature of the sentence, or to alter or reverse an order not a conviction or sentence.

S. 426 to the suspension of a sentence or order, and to admission on bail or personal recognizance

S. 427 to an order for the arrest of an accused person.

S. 428 to the taking of additional evidence.

S. 338 to an offer of conditional pardon.

The second para. of S. 439 is new, and must be read so as to mean any order adversely affecting the position of the accused at that time, otherwise as any order passed by a Court of Revision rejecting an application on behalf of an accused would be to his "prejudice" he might claim the right to be heard. Compare S. 340 which declares that every person accused before any Criminal Court may of right be defended by a Pleader.

The High Court, as a Court of Revision, will not interfere in the case of persons who have not appealed to the proper Court merely because others tried in the same case who have appealed have been acquitted. Application in such a case should be made to the Local Government. Sheo Surun Singh, Cal. H. Ct., Aug. 16. 1877. Nor will the High Court exercise its extraordinary powers as a Court of Revision so long as the right of appeal remains, and until all such remedies provided by law have been exhausted. Rajcoomar Singh, 1 Cal. L. R., 352: Nilambar Baboo, I. L. R., 2 All., 276.

The High Court in exercise of its powers of superintendence and revision will not go into evidence and examine the conclusions of the Lower Court on the facts, otherwise an appeal would lie against every decision of the subordinate Courts which was clearly not intended by the Legislature. But the High Court is nevertheless not excluded from interference when, in cases requiring the exercise of discretion, it appears on the face of the proceedings that a Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable. The High Court has the power and ought to interfere where the Magistrate has been guilty of misconduct. In the matter of Jaggut Chunder Chuckerbutty, I L. R, 2 Cal., 110.

The probative form or effect of evidence is a question of fact; where there is evidence to be considered and weighed, a judgment of conviction will not be set aside by a Court of Revision. It is otherwise if on certain facts found a Court misapplies the law.—Mad. H. Ct. Pro. Nov. 29, 1869. Weir, 219. Aurokiam, Pet. Mad. H. Ct.; Weir, 221.

Where the evidence discloses the commission of an offence of a graver character and beyond the jurisdiction of the Magistrate who tried the case, the High Court can quash the conviction and sentence for the minor offence, and direct the trial before a Court having jurisdiction for the graver. Whether the High Court will do so or not is a question not of law but of expediency on the facts of the particular case. Mad. H Ct. Pro., May 1, 1872, Weir, 219. So where upon certain facts the Magistrate convicted the accused of voluntarily causing grievous hurt,

Ch. XXXII. — Ss. 440-442.

the High Court set aside the conviction and sentence, because on those facts the accused should have been tried in the Sessions Court on a charge of culpable homicide not amounting to murder. A commitment was accordingly ordered. Gopeenath Sirdar, 1 Cal. L. R., 141: See also Hurrish Pal, 20 W. R., 63. Again, when the prisoner had been wrongly convicted in the Sessions Court under S. 304A, Penal Code, of causing death by a rash and negligent act, and sentenced to rigorous imprisonment for one year, the High Court, as a Court of Revision, after calling on him to show cause why the conviction should not be modified and the sentence enhanced, convicted him of culpable homicide not amounting to murder, and sentenced him to five years rigorous imprisonment. *In re* Khyardi Mundul, I. L. R., 4 Cal., 474.

Although an Appellate Court is now deprived of the power to enhance a sentence, it is competent on the appeal of an accused to order him to be committed for trial, S. 423 (*a*); the power to enhance is conferred by S. 439 on the High Court alone as a Court of Revision.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

(S. 297, last para.)

See note to S. 439.

Every person accused before any Criminal Court may of right be defended by a Pleader. S. 340.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

(Act IV 1877, S. 182.)

High Court's order to be certified to Lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified

shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

(S. 299, paras. 1, 2.)

S. 425 provides that in the case of an appeal to the High Court, if the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate. In cases of Revision this certificate is to be communicated direct to the Court by which the finding, sentence or order was passed. The reason for this difference of practice is not apparent.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrate who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

(S. 72, paras. 1, 2; S. 74, para. 1.)

"European British subject" means—

(1). Any subject of Her Majesty, born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent. S. 4, (*t*).

An European British subject is not exempt from the ordinary jurisdiction of the Courts except in inquiries or trials into charges of offences. In matters coming under Chapter VIII, relating to security to keep the peace or for good behaviour (unless in the latter case the matter can be dealt with under the European Vagrancy Act 1874) (S. 111 *ante*): under Chapters X, XI, relating to the removal of public nuisances: under

Ch XXXIII — Ss. 444, 445.

Chapter XII, relating to disputes as to immoveable property. under Chapter XXXVI, relating to the maintenance of wives and children. European British subjects are subject to the ordinary jurisdiction of the Criminal Courts.

Two exceptions are made to this special jurisdiction on behalf of European British subjects:—(1) any Civil, Criminal or Revenue Court can convict and sentence any one, whether he is an European British subject or not, to a fine not exceeding two hundred rupees, and in default to simple imprisonment for a term which may extend to one month, unless the fine be sooner paid, for certain contempts of Court committed in its view or presence. S. 480.

(2.) When after being determined to be a vagrant, or being convicted of having returned to India without special permission within five years from the date of his embarkation in pursuance of his agreement, or of begging, an European British subject remains in India, he loses this privilege under the Code of Criminal Procedure of being treated as such. European Vagrancy Act, IX of 1874, S. 30.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

444. No Judge presiding in a Court of Session shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

(S. 72, para. 1; S. 76, para. 1.)

See last portion of note to S 443 regarding the exceptions to this special jurisdiction for European British subjects.

Cognizance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

(Ss. 73, 438.)

Ss. 191, *et seq.* declares what Magistrates can take cognizance of an offence and under what circumstances.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees, or both.

Sentences which may be passed by Provincial Magistrates.

(S. 74, para. 2.)

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When commitment is to be to Court of Session and when to High Court

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

(S. 75, para. 1; S. 438, para. 2.)

In a case where death resulted from violence, the accused, an European British subject, was committed for trial by the Court of Session on charges none of which were punishable with death or transportation for life. On a reference to the Calcutta High Court, it was held that as the offence complained of was punishable with death or transportation for life the Magistrate had no authority to commit the accused for trial by the Court of Session. The order of the Magistrate was accordingly set aside, and the commitment of the accused to the High Court ordered. Queen *v.* Heenan, Aug. 24, 1877.

In another case, however, of a similar nature, it was held that the commitment was not illegal, and that after giving the accused an opportunity to be heard, the Sessions Judge might have transferred the case to the High Court where a proper charge would have been framed. The delay of making a reference would thus have been avoided. Queen *v.* Macgregor, Cal. H. Ct. Sept. 6, 1877.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

(Act XI 1874, S. 12, para. 2.)

Sentences which may be passed by Court of Session.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court,

(S. 76.)

S. 452 provides that if a person who is an European British subject is accused jointly with one who is not, and the former is committed for trial by the High Court, both may be tried together.

Procedure when Sessions Judge is not an European British subject.

450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing Magistrate for the orders of the highest Court of criminal appeal for the province within which such division is situate.

In British Burma the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest Court of criminal appeal.

(S. 77.)

Mixed jury for trial of European British subjects.

451. In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject re-

quires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

(S. 78, para. 2.)

Trial of European British subject and Native jointly accused.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

When native may claim separate trial.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

(Act X 1875, Ss. 36, 37.)

In a trial by Jury, before the Court of Session, of a person not being an European or an American, the majority of the Jury, shall, if he so desires it, consist of persons who are neither Europeans nor Americans. S. 275.

Procedure on claim of person to be dealt with as European British subject.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

Ch XXXIII

S. 454.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

(S. 83.)

Before committing an European British subject for trial by a Court having jurisdiction, the Magistrate and Justice of the Peace holding the preliminary inquiry should satisfy himself that there is evidence of his being amenable to the jurisdiction of that Court. For this purpose, there should be produced the evidence of a credible person, who knows the accused and his place of birth, or who has heard him declare to what country he belongs. If an accused person plead before a Magistrate that he is a European British subject, and that therefore, he is not amenable to the jurisdiction of the Local Courts, and the Magistrate has no reason to distrust this statement, it is sufficient for the Magistrate to act on this allegation; and if he considers the evidence to be such as to warrant the commitment of the accused person to the High Court, he should make such commitment. The Magistrate should, however, forward as a witness some person who heard the accused person make this plea.—Calcutta High Court Cir., 5, May 6, 1864.

A Magistrate is bound to give an accused person an opportunity of pleading that he is an European British subject when there is reason to believe that he is such.—Clerk *v.* Beane, 5 W. R., 53.

When the accused pleaded that he was an European British subject, but, without deciding this plea, the Magistrate who was competent to try him, even if he were so, tried and sentenced him to a sentence beyond his powers over such a person, the High Court directed the Magistrate to inquire into this plea giving the accused an opportunity of proving it and on receiving the Magistrate's certificate that the accused was an European British subject the High Court directed the Magistrate to commit him for trial by the Court of Session competent to hold the trial refusing to try the case itself, and further directed that if that Court agreed in the conviction, it should pass the sentence that the Magistrate could pass.—Empress *v.* Berrill, I. L. R., 4, All., 4.

Failure to plead status a waiver.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is

tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

(S 84.)

See note to S 453.

The last para. is in accordance with the judgment *In re* Quiros, 6 Cal. L R., 465: (S. C.) I. L R., 6 Cal., 83. Before an European British subject can be considered to have waived the privilege conferred on him by S. 443, it must appear that his rights have been distinctly made known to him, so that he would have been enabled to exercise his choice and judgment whether he would or would not claim such rights. The Legislature could not have meant that a person might be tried or committed by a Magistrate, whose act in trying or committing him would be altogether invalid, so that such act could be immediately got rid of by application to the proper Court.

S. 534 of this Code, however, enacts that an omission to ask any person whether he is an European British subject in a case to which the second clause of S. 454 applies shall not affect the validity of any proceeding. But if the Magistrate knows or ought to know that there was a defect in his jurisdiction because the accused is an European British subject, he is bound to give the accused an opportunity of pleading it. If it can be shown that the Magistrate knew or ought to have known the fact, and nevertheless proceeded with the case, he is liable to an action for trespass. Calder *v.* Halkett, 2 Moore, Ind. App., 293.

The point was also discussed in the case of *In re* Foy (Taylor and Bell, 219) by the late Supreme Court of Calcutta when the following judgment was delivered:

"If the Magistrate knows that the prisoner is an European British subject, it is his duty, whether the prisoner claims exception or not, to abstain from further proceedings against him as a Magistrate. If without any actual knowledge on the subject, the Magistrate has reason to suppose that the prisoner is such a British subject, it is the Magistrate's duty to ascertain from him, whether he alleges or denies that he is one; and if he alleges that he is, to give him every facility by allowing time, and otherwise, for proving that he is, the burden of such proof being on him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is an European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or is not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being an European British subject, the Magistrate will be

Ch XXXIII — S. 455.

quite warranted in proceeding against him. If he do so plead, and gives proof or produce documents which, although not amounting to full legal proof of his *status*, satisfy the Court that he is really an European British subject, the Magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a Justice of the Peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent.

"The law is, that if a Judge has no jurisdiction, and has the knowledge or means of knowledge of his want of jurisdiction, he is liable as a trespasser if he acts. (Calder *v.* Halkett and the cases there referred to.) The duty of a Court is to walk in the course prescribed for it, as it understands its limits, and not to assume a jurisdiction which has not been confided to it. If a Court have reasonable ground to doubt its jurisdiction, it should take care to clear up the point, and to allow time for the production of the proper evidence. It is undoubtedly true, that if a Court of limited jurisdiction exceeds its jurisdiction by reason of the existence of a personal exemption, or other cause not communicated, not known to the Judge, or of which he has not the means of knowledge in his reach, the Judge and his officers cannot be treated as trespassers. The case of the Marshalsea Court (cited in Mr. Baron Powell's judgment) shows that it is otherwise, where the means of knowledge are in the power of the Judge. It is therefore an unsafe doctrine to hold out to a Judge, that he may disregard an apparently *bonâ fide* claim of personal exemption from his jurisdiction, which he knows, or has good reason to believe, is well founded, on the ground of the absence of legal proof of the fact of exemption; for in many cases no doubt can exist of the truth of facts which a party, incapacitated from giving evidence for himself, is under a temporary inability to prove, and the question would be whether the Judge really believed that he had the jurisdiction which he exercised. The question would not turn on this, *viz.*, on whom the *onus* of proof of the exemption would lie, if put in issue; but on the *bona fides* of the proceeding upon the claim of the exemption. The question before us, however, is unaffected by such considerations for if there be error in the proceeding, it is not the less a proceeding of a Court of competent jurisdiction. It is not alleged that the Court knew that it wanted jurisdiction. That question might be tried in its appropriate mode of proceeding, either by criminal or civil procedures. If a Judge discovers at any stage of the proceedings, that he has really no jurisdiction over the subject matter or the person, he would be utterly inexcusable, if he proceeded further and did not do his utmost to remedy what had been unwittingly done in the belief of jurisdiction. The immunity from suit for judicial acts is in respect of the character of Judge, which if a man assumes, knowing that in fact he is not so, either as to the subject matter or the man, he neither merits nor has any immunity."

Since the above decision, Act XVIII of 1850 has been passed "for the greater protection of Magistrates and others acting judicially."

Trial under this chapter of person not an European British subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not

object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

(S. 85.)

This will of course be subject to the last para. of S. 454.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

(S. 81, para. 1, cl. i.)

See the judgment of Turner, J. in the case of Gholam Ismail, I. L. R., 1, All. 1, in which he held that the special provision made by S. 456 for European British subjects clearly manifests the intention of the Legislature to prevent the summary interference of the High Court in cases in which natives of this country might complain of illegal detention.

S. 100 provides for a search-warrant for a person wrongfully confined, and for the production of such person, if found, before a Magistrate.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

(S. 81, para. 1, cl. ii.)

Territories throughout which High Court may issue such orders

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other

Ch XXXIII — S. 458. territories as the Governor General in Council may direct. (S. 81, para. 2.)

No. 1203.—In exercise of the powers conferred by the 28th of Victoria, cap. 15, S. 3 the Governor General in Council is pleased to make the following orders :—

I.—Original and appellate criminal jurisdiction shall be hereafter exercised over European British subjects of Her Majesty by the several High Courts established at Madras and Bombay, and in the North-Western Provinces of India, respectively, as below provided:

By the High Court at Madras in—
- Coorg.
- Upper Godavari District of the Central Provinces.

By the High Court at Bombay in—
- The Nagpur and Narbada Divisions of the Central Provinces.
- The Chattisgarh Division of the Central Provinces.
- The Pargana of Manpur, in Central India.

By the High Court of the North-Western Provinces in—
- Oudh.
- The Jabalpur Division of the Central Provinces.
- The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto other than the Station at Sutna.
- Marar Cantonment, Ajmir, and British Mairwara.

II.—The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, shall be deemed to be part of the District of Allahabad for the purpose of the trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Sessions, and alleged to have been committed on the said line of Railway, lands, and buildings.

No. 1783, 23*rd Sept.* 1874.—With reference to Notification No. 1203 of this date, in the Home Department, the Governor General in Council is pleased, in the exercise of the powers conferred by the 28 Victoria cap. 15, S. 3, to make the following orders :—

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native States, Territories, and Chiefships, below named, shall, until the Governor General in Council otherwise orders, be exercised by the High Courts of Judicature established at Fort William, Madras, Bombay, and in the North-Western Provinces, respectively, as follows :—

I.—By the High Court at Fort William, in—

Manipur.	Sikkim.
Kuch Behar.	Bhutan.
The States in the Khasia Hills.	Hill Tipperah.
The Katak Tributary Mahals.	Nepal.
The Tributary Mahals of Chutia Nagpur.	The Territories of Chiefs or Tribes adjoining the Bengal Frontier.

II.—By the High Court at Madras, in—

Mysore.	Pudukottai.
Travancore.	Banganpalle
Cochin.	Sandur.

III.—By the High Court at Bombay, in—

The Haidarabad Assigned Districts.
Haidarabad, excepting the Assigned Districts.
Ali Morad's territory in Upper Sindh.
Kalhapur.
Sawant Wari.
The southern Mahratta States
The Satara Jagirs.
Jingira.
Suchin.
Bansda.
Dharampur.
Jawar.
Cambay.
The Gaikwar's territories.
The States in Kathiawad.
Kachh. [Agency.
The States in the Pahlanpur
The States in the Mahi Kanta Agency. [Agency.
The States in Rewa Kanta
Penth, in the Ahmadnagar Collectorate.
The territories of Chiefs or Tribes adjoining the Sindh Frontier.
Bhopal.
Barwani.
Dewas.
Dhar.
Indore, excepting the District of Alampur in Bundelkhand.
Jobatt.
Burwai.
Gwalior, Districts of—
Amjhira.
Agar.
Bag.
Diktan.
Mandisur.
Nimuch.
Ujein.
Sagor.
Shujawalpur.
Sonkach
and
} With the several Pergunnahs subordinate thereto included in the charge of Scindia's Sir Subah of Malwa.
Bhilsa.
Ganj Baroda.
} With the several Pergunnahs subordinate thereto, which form part of the charge of Scindia's Sir Subah of Esangarh.
Malharghar.
Maksudanghar.
Jalra Patan, district of—
Gangrar.
Pach Pahar.
Dag.
Tonk, district of—
Pirawa.
Nimbhera.
Seronje.
Meywar.
Pertabghar.
Marwar.
Dungarpur.
Banswara.
Jhalawar.
Serohi.
Jaisalmir.
The Feudatory States in the Central Provinces, *viz.*:
Kattiwara.
Mukammadgarh.
Matwara.
Rattan Mal.
Ali Rajpur.
Jhabna.
Jaura.
Kilchipur.
Narsinghar.
Rajghar.
Ratlam.
Sitaman.
Sillana.
Kalabandi or Karond.
Raigarh Bargarh.
Sarangarh.
Patna.
Sonepur.
Rairakhol.
Bamra.
Sakti.
Kawarda.
Kairagarh.
Nandgaon.
Kondka or Chaikadan.
Kanker.
Bastar.
Makrai.
Savanur (*Gaz.* India, 1874, p. 612.)

Ch. XXXIII

S. 458.

IV.—By the High Court of the N. W. Provinces, in—

Provinces in—
- Garhwal.
- Dholpur.
- Bhartpur.
- Alwar.
- Jeypur.
- Keroli.

Tonk, with the exception of Pirawa, Nembhera and Seronje.
- Katah.
- Bundi.
- Kishengarh.
- Bikaner.
- Shapura.
- Rampur.
- Behri.
- Bhaisonda.
- Bijawar.
- Bigna.
- Chirkhari.
- Chatrapur.
- Dhurwai.
- Dhattiah.
- Geranli.
- Gaurihar.
- Jigni.
- Jassu.
- Kamta Rijola.
- Koti.
- Kanniadhana.

Gwaliar.—The whole of the State, excepting the Sir Subahship of Malwa and the Districts under the Sir Subah of Esangarh, enumerated above.

The Mairwara Pergunnahs belonging to Meywar and Marwar.

Bandelkhand States and Chiefships—
- Adjeygarh.
- Alipura.
- Baoni.
- Beronda.
- Behat.
- Logasi.
- Mahir.
- Nagod.
- Naiagoan Rebai.
- Urcha.
- Pahari Banka.
- Pahara Chanbe.
- Paldeo.
- Panna.
- Rewah.
- Sohawal.
- Sampthar.
- Surila.
- Tiraon.
- Tori Futtehpue. [pur.
- Holkar's District of Alam-

All Justices of the Peace within the states, territories, and chiefships specified in the preceding Notification, have under S. 6, Act XI, 1872, been empowered to commit for trial to the High Courts respectively, having jurisdiction under the said Notification, such European British subjects, being Christians as are required by Act X of 1872 to be committed to a High Court.—*Gaz. of India*, 1874, Part I, p. 486.

In modification of Notifications No. 2199g, dated 11th October 1872, and No. 396g, dated 14th February 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the lands described in the aforesaid Notifications shall not be exercised by the Agent to the Governor General in Rajpootana, in cases in which the accused are European British subjects being Christians.—*Gaz. of India*, 1874, Part I, p. 486.

In modification of Notification No. 159J, dated 7th August 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the territories described in the aforesaid Notification shall not be exercised by the Agent to the Governor General in Central India, in cases in which the accused are European British subjects being Christians.—*Gaz. of India*, as above.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate or Sessions Judge outside the Presidency-towns not being an European British subject.

(Act XXII, 1870, Ss. 2, 4.)

Thus under Act I of 1859 (the Merchant Seamans Act) certain offences committed by European British subjects were punishable by a Justice of the Peace. It has been held by the Madras High Court that such an offence can nevertheless be tried only by a Justice of the Peace who is also a Magistrate of the first class and himself an European British subject.—Mad H. Ct., Pro. Dec. 18, 1873, 7 Mad. *App.* xxxiii (S. C.) 9 Mad. Jur., 105.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans.

(S. 234, para. 1, cl. ii.)

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately. (S. 242.)

Jury when European or American charged jointly with one of another race.

Similarly S. 275 provides for the converse :—

In a trial by Jury, before a Court of Session, of a person not being an European or an American, the majority of the Jury, shall, if he so desires consist of persons who are neither Europeans nor Americans.

Summoning and empanelling jurors under section 451 or 460.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

(S. 408, paras. 1, 2, 3.)

Conduct of criminal proceedings against European British subjects, &c.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

(S. 87.)

CHAPTER XXXIV.

LUNATICS.

Procedure in case of accused being lunatic.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

(Ss. 423, 424, para. 3.)

The Civil Surgeon of the District would ordinarily be examined by the Magistrate as a witness. The "other medical officer" appointed by the Local Government might be a person for whose examination a commission might issue under Chapter XL, Ss. 503 *et seq.*

Wandering lunatics are thus provided for by Act XXXVI, 1858, Ss. 4, 5, 18:—

It shall be the duty of every Daroga or District Police officer to apprehend and send to the Magistrate all persons found wandering at large within his District, who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such peason as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a Medical officer, shall examine such person, and the Medical officer shall sign a certificate in the form A in the schedule to this Act, and the Magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the Asylum established for the Division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country and the circumstances of the case so require, into a Lunatic Asylum at the Presidency; and shall send the lunatic in suitable custody to the Asylum mentioned in such order. Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing to the satisfaction of the Magistrate that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an Asylum, may make him over to the

Ch. XXXIV — S. 465.

care of such friend or relative. Provided also that, if any such friend or relative shall desire that the lunatic shall be sent to a licensed Asylum instead of the public Asylum of the Division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such Asylum, the Magistrate may send the lunatic to the licensed Asylum mentioned in the engagement. S. 4.

If it shall appear to the Magistrate, on the report of a public officer or the information of any other person, that any person within the limit of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly taken care of and treated, and if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month. If there be no person legally bound to maintain the supposed lunatic, or if the Magistrate think fit so to do, he may proceed as prescribed by in the last preceding section, and upon being satisfied in the manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment, may make an order for his reception into such Asylum as aforesaid. It shall be the duty of every Daroga or District Police officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge. S. 5.

The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot. S. 18.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

(S. 425, Act XI, 1874; S. 39.)

The Bombay High Court directed a Sessions Judge that, on entertaining doubts as to the sanity of the accused person, he should not merely have put questions to him, but should have tried the fact of such unsoundness of mind by examining the Civil Surgeon or some other Medical officer, and by taking such evidence as might have been procurable from the village in which the accused resided, with the view of as-

certaining whether he had, at any time prior to the commission of the crime, exhibited symptoms of insanity.—Heera Poonja, 1 Bomb., 33.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in his behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order. (S. 426.)

The Government of Bombay has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S 466 of this Code to the Commissioner of Sindh.—*Bom. Gaz.*, 1874, p. 312.

The Court before which the accused person is so brought should report the case direct to Government, with a history of the facts.—Beng. Govt. Cir. 84, Oct. 28, 1870; Agra Sud. Ct. 91, 1863. In the Panjab such cases should be reported to Government through the Commissioner —Smyth, p. 134.

After a case has been reported to Government under S. 466, it should not be struck off, but kept on the register of pending cases.—Rughooa, 6 W. R, 3.

Pending a reference to Government, the lunatic should be detained either in the Jail-Hospital or in the Lunatic Asylum, (when there is one) at the discretion of the Magistrate.—Govt. of Bengal Cir. 48, August 12, 1871.

The following rules for the conveyance of lunatics to Asylums have been issued by the Government of Bengal :—

1. For persons of unsound mind who need to be sent to the Lunatic Asylums of the Lower Provinces, whether practicable, water shall be preferred to land carriage.

2. No lunatic shall be sent from a jail, or other place in which he is temporarily confined for safe custody, to a Lunatic Asylum, when he is in an unfit state to travel with safety, either from ordinary bodily disease, or during the acute stage of the form of mental aberration under which he is labouring.

Ch XXXIV

S. 467.

3. Every lunatic, who is unable to take care of himself, or to attend to his personal wants, shall be provided with the attendance, clothing, and food, necessary for his safety and protection, and the strictest injunctions shall be given to the persons in charge of such lunatics to see that they do not suffer injury from exposure to weather, want of food, the neglect of personal cleanliness, or any other cause whatever.

4. Every lunatic in transit to an Asylum shall be provided with at least two complete suits of clothing, and with an extra blanket, so as to admit of their being changed and washed in case of necessity. The most stringent orders shall be given to the persons in charge of a lunatic that all fouled clothes shall immediately be changed and cleansed before they are again worn.

5. Proper provision for cooking and supplying the food of lunatics in transit shall be made by the officer transmitting them.

6. Every lunatic, prior to transfer to an Asylum, shall be carefully examined by the Medical officer who furnishes the certificate of unsoundness of mind, and the Medical officer referred to shall certify that all the above-mentioned provisions for the safe custody of the lunatic have been made, and that he is in a fit state to travel. This certificate shall be transmitted by post to the officer in charge of the Asylum to which the lunatic is sent, and a duplicate copy of it shall be given to the person sent in charge of the lunatic.

7. The officer in charge of the Asylum shall, on the arrival of a lunatic, see that the above orders have been strictly observed, and that the lunatic has been properly cared for in transit. Should there be any evidence of carelessness or other breach of these rules, the matter shall at once be reported in writing to the Magistrate of the District for the information and orders of the Government

After a person has been made over to the Local Government, the matter is beyond the authority of the Magistrate until he is replaced before that officer for trial under S. 468 on his being reported to be capable of making his defence. A Magistrate therefore cannot release such a person accused of a bailable offence for whose proper care sufficient security is offered after he has been made over for safe custody in the place appointed by the Local Government.—*In re* Joy Hurree Kor, I. L. R., 2 Cal., 356.

Under 14 and 15 Vic. c. 81, Ss. 1, 2 if any person shall be indicted for or charged with any crime or offence in India, and shall be acquitted of or not tried for such crime or offence on the ground of his being found to be of unsound mind, he may be removed to England in custody by order of the person administering the Government of the Presidency in which such person shall be in custody to abide the order of Her Majesty concerning his safe custody. And upon his arrival in the United Kingdom it shall be lawful for Her Majesty to give such order for the safe custody of such person during her pleasure to such place and in such manner as to Her Majesty shall seem fit.

Resumption of inquiry or trial.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or

trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

(S. 427.)

Procedure on accused appearing before Magistrate or Court.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

(S. 428.)

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

(S. 424, paras. 1, 2.)

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind,

Ch. XXXIV S. 470.

incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

(S. 429.)

S. 84, Penal Code, declares that "nothing is an offence which is done by a person, who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

S. 84 of the Penal Code falls within Chapter IV of that Code which relates to "general exceptions," and S. 105 of the Evidence Act declares that, "when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code is upon him, and the Court shall presume the absence of such circumstances."

The fact of unsoundness of mind must be clearly and distinctly proved before any jury is justified in returning a verdict under S. 84, Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts until the contrary is proved.—Nobin Chunder Bannerjea, 20 W. R., 70.

If upon a trial it is doubtful whether the accused was or was not sane at the time of the commission of the criminal act charged, the trial should be postponed, and he should be placed under the care of the Civil Surgeon, who should carefully watch his state of mind, with the view to discover whether he is subject to recurring fits of insanity or light-headedness. The Calcutta High Court, on his appeal, remanded the case of Sheikh Moostafa (1 W. R., 1) for this purpose, ordering that, after having had charge of the prisoner for a period not less than thirty days, the Civil Surgeon should report to the Sessions Judge, and be examined on oath as to his state during that period.

It will not be out of place here to quote the leading case in England on this point. The following questions were put by the House of Lords in the case of R. *v.* McNaughten (Archbold, pp. 15—17) and received answers from the English Judges as below stated :—

"1*st.*—What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury. or of producing some public benefit?

"2*nd.*—What are the proper questions to be submitted to the jury when a person, alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example), and insanity is set up as a defence?

"3*rd.*—In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

"*4th.*—If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?

"*5th.*—Can a Medical man, conversant with the disease of insanity, who never saw the prisoner previous to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under, and what, delusion at the time?"

To these questions the Judges (with the exception of Maule, J., who gave on his own account a more qualified answer) answered as follows:—

To the *first* question:—"Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he know, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land."

To the *second* and *third* questions:—"That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstance of each particular case may require."

Ch. XXXIV — S. 471.

To the *fourth* question :—"The answer to this question must of course depend on the nature of the delusion; but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment If his delusion was that the deceased has inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the *last* question :—"We think the Medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

In the cases of Sheikh Moostafa (1 W. R, 1) and of Pursoram (7 W. R., 42), which were tried in the Sessions Courts with the aid of Assessors, the Calcutta High Courts acquitted the prisoners on the ground specified in S. 84, Penal Code, but directed the Sessions Judge to report the cases for the orders of Government under S. 470, Code of Criminal Procedure.

The terms of the law should be strictly followed in recording the finding in a case falling under S 470. A Judge should not find an accused person guilty of the offence charged, and then acquit him on the ground of insanity.—Cal. H Ct. 22, 1864.

The following finding was given by the Calcutta High Court (8 W. R, 19, C. L,) as a model in cases dealt with under S 429 :—The Court concurring with the Assessors, finds that Gazee Peer did kill Baboo Mundul by striking him on the head with a club; but that by reason of unsoundness of mind he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not, therefore, guilty of the offence specified in the charge, *viz.*, that he has committed culpable homicide not amounting to murder by causing the death of Baboo Mundul, and has thereby committed an offence punishable under S. 304 of the Indian Penal Code; and the Court directs that the said Gazee Peer be acquitted, and that, under the provision of S. 470 of the Code of Criminal Procedure, the said Gazee Peer be kept in safe custody in the ———, pending the orders of the Local Government.

The insanity of the accused person at the time of his committing the offence should not be tried as a preliminary point. It should be determined at the conclusion of the trial.—1 Agra, 53.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court

before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

(S. 430.)

The following form of finding under S. 471 in a trial held with Assessors has been prescribed by the Calcutta High Court, No. 955, Aug. 17, 1867, Wilkins, 76.

"The Court, concurring with the Assessors, finds that ( ) did kill ( ) by striking him on the head with a club, but that, by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not therefore guilty of the offence specified in the charge, *viz.*,

and the Court directs that the said ( ) be acquitted, and that under the provisions of section 471, Criminal Procedure Code, the said ( ) be kept in safe custody in the pending the orders of the local Government."

Lunatic prisoners to be visited by Inspector General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

(S. 431.)

Procedure where lunatic prisoner is reported capable of making his defence

473. If such person is confined under the provisions of section 466, any such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court ap-

points, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

(S. 432.)

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

(S. 433.)

The Government of BOMBAY has, under Act V, 1868, S 2, delegated the powers of a Local Government under S. 474 of this Code to the Commissioner of Sindh.—*Bomb. Gaz.*, 1874, p 34.

Report under S. 474 should, in the PUNJAB, be made to Government through the Commissioner.—Smyth, p. 134.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

(S. 434.)

The Government of BOMBAY has, under Act V, 1868, S. 2, delegated the powers of a Local Government under S. 475 of this Code to the Commissioner of Sindh.—*Bomb. Gaz.*, 1874, p. 34.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 transfer cases, transfer the inquiry or trial to some other competent Magistrate.

(Ss. 471, 477.)

S. 195 declares that no Court shall take cognizance of certain offences in contempt of the lawful authority of a public servant, or against public justice, or relating to documents given in evidence without previous sanction or complaint of the public servant concerned, or of some superior officer, or of the Court concerned, or of some Court to which it is subordinate.

Ch. XXXV.

S. 476.

The sanction refers to a private prosecution, the complaint to action directly taken at the instance of the particular public servant or Court immediately concerned, or of some superior public servant or Court. Before such complaint can be made, the particular Civil, Criminal or Revenue Court must proceed as directed by S. 476.

The High Court has invariably insisted that there must be some preliminary inquiry before a prosecution is regularly commenced and has set aside proceedings taken without such inquiry. It is not sufficient that a Court should give a reasonable indication of the nature of the offence to be inquired into by the Magistrate, or that it should decide as to the necessity for a Magisterial inquiry. Something more is needed than a mere indication that a witness has spoken falsely before a Civil Court is justified in initiating a prosecution for giving false evidence. There must be evidence of a direct and substantial nature before the Court, evidence going to show that the statement made by a witness is absolutely false. The law does not warrant a Judge in issuing a general commission to a Magistrate to inquire generally into the truth or falsehood of depositions or of averments in a plaint, and the Judge is bound to indicate the particular statement or averments in regard of which he considered that there was ground for a charge into which the Magistrate ought to inquire. Baijoo Lall, I. L. R., 1 Cal., 450

A Judge cannot send a case to a Magistrate for inquiry in order that the Magistrate, instead of the Judge may satisfy himself that any charge of any kind is made out against the accused. Proceedings taken on such an order are without jurisdiction. Kali Prosunno Bagchee, 23 W. R., 39. In the case of Mutty Lal Ghose, I L. R., 6 Cal., 308 the Calcutta High Court (Garth, C. J., and Maclean, J.) stated that the ruling in the case of Baijoo Lall, I L. R, 1 Cal., 450 had been somewhat misunderstood. It seems from that ruling that a Court, Civil or Criminal, which has heard a case tried, has no right to institute proceedings against any of the parties concerned in that case without first holding an inquiry and calling on those parties to show cause why such proceedings should not be taken. This is clearly a mistake. If in the course of proceedings, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either of the parties or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such persons without any further inquiry than what has been already held in his own Court.

The commonest class of case which arises is where a Magistrate, after examination of a complainant, has reason to distrust the complaint, and under S. 202 directs a local investigation to be made for the purpose of ascertaining its truth or falsehood before issuing process to compel the attendance of the accused, and then after considering the result of that investigation, under S. 203, dismisses the complaint because in his judgment there is no sufficient ground for proceeding, and simultaneously with that order directs the complainant to be prosecuted for having intentionally made a false complaint (S. 211, Penal Code).

Sometimes this order is passed in the absence of the complainant and sometimes in his presence and after a refusal to examine any witnesses on his behalf then present or to issue summons for their attendance. The Calcutta High Court has in several cases pointed out the

unfairness of such a course to the complainant, and the injurious effect of putting such power in the hands of the Police so as practically to enable them to determine when a complainant should be subjected to a criminal prosecution; although the Magistrate may have good reason for dismissing the complaint, he should give the complainant an opportunity of showing in the preliminary inquiry to be held under S. 476 that his complaint is not of such a nature as to subject him to be prosecuted under S 211, or S. 193, Penal Code, or for any other offence. At the same time if the complainant does not, after sufficient interval of time, appear and dispute the Police report, or ask to have his witnesses examined, a prosecution may be ordered. Gour Mohun Singh, 16 W. R. 41: Ashroff Ali, I. L R., 5 Cal., 281: *In re* Russick Lall Mullick, 7 Cal. L. R., 382: Choolhai Telee, 2 Cal L. R., 315: Biyogi Bhagut, 4 Cal. L. R., 134: Gyan Chunder Roy, I. L. R., 7 Cal., 582: Karimdad Khan, I L. R., 6 Cal., 496: Salik Roy, I. L R, 6 Cal., 582: Abul Hosein, I. L. R, 1 All, 497: Chackradar Potti, 8 Cal., L. R., 289.

The original case out of which the charge of perjury &c. has arisen should have been determined. Bishoo Barik, 16 W. R., 77: Surbhanna Gaundan, 1 Mad, 30: Gyan Chunder Roy, I. L. R., 7 Cal, 208. Criminal proceedings should not be instituted so long as there is any possible doubt, or it is not perfectly certain that the decision in that case will be maintained in the event of an appeal being made.—Baijoo Lall, I. L. R., 1 Cal, 450.

A preliminary inquiry held under S. 476 is not judicial. The parties examined should not therefore be examined on oath or affirmation. The Magistrate should examine the witnesses *de novo*. Jud. Comr., Punjab, 1610, April 1, 1862: Nujjum Ali, 6 W. R, 41. A commitment made by a Magistrate to the Court of Session without any inquiry held by himself is illegal. Radhanath Majoomdar, 5 Wyman, 19: Nujjum Ali, 6 W. R, 41: Tookhanund, 6 Agra, 115. It is not necessary that the preliminary inquiry should be conducted in the presence of the accused though an opportunity should be given to him to attend. All that the Court making it has to do is to satisfy itself that there are *primâ facie* grounds for sending the case to a Magistrate.—Choto Shadoo Peada, 9 W R., 3.

If it is intended to charge a person with intentionally giving false evidence in making two contradictory statements, the Court which desires to take action should obtain sanction from the Court before which the other statement was made. Govt. Bengal, 24 W. R, 41: Ramranjan Bhandari, 25 W. R, 33. The Court making the preliminary inquiry has no power to insist on the attendance of an accused person, but if he is present it can send him in custody to the Magistrate or take sufficient security for his appearance

Power of Court of Session as to such offences committed before itself

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

(S. 472, paras. 1, 2.)

S. 444 relates to cases against an European British subject with which the Judge presiding in a Court of Session cannot deal unless he is himself an European British subject and if he is an Assistant Sessions Judge unless he has also held that office for three years and has been specially empowered by the Local Government in that behalf.

S. 477 does not require that the offence should be triable exclusively by a Court of Session as was enacted by S. 472, the corresponding section, of the Code of 1872

A Sessions Judge is not competent under S. 477 to commit a person charged with having intentionally given false evidence in making a statement before him contradictory to one previously made to a Magistrate unless it be intended to prove that the statement in the Sessions Court is the false statement. If the offence is to be proved merely by the fact that contradictory statements were made, and a conviction to be asked for in the alternative, then inasmuch as the statement made before the Magistrate may be the false statement, the Sessions Court would not be competent to act under S. 477 as that offence would have been neither committed before it nor brought under its notice in the course of a judicial proceeding. See Nomal, 4 B. L. R., 9.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice or any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

(S. 474, paras. 1, 2; S. 476.)

In this section, as in S. 477, the offence need not be one triable exclusively by a Court of Session to enable a Civil or Revenue Court to commit a case for trial by a High Court or Court of Session. S. 474 of the Code of 1872 made this is a *sine quâ non*.

There must be an inquiry held. A commitment cannot be made merely on proceedings held in the civil suit in which the offence is alleged to have been committed.—Rungatoonee, 22 W. R., 52.

Procedure of Civil Court in such cases

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

(S. 478.)

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

(S. 435.)

This is an exception to the rule laid down by S. 443 which makes European British subjects amenable only to Criminal Courts presided over by special officers.

S. 175, Penal Code, relates to the omission to produce a document before a public servant by a person legally bound to produce such document.

S 178 relates to the refusal of a person to bind himself by a oath to state the truth, when duly required so to bind himself by a public servant.

S. 179 relates to the refusal of a person, legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers.

Ch XXXV. S. 180 relates to the refusal of a person to sign a statement made by him on lawful demand of a public servant.

S. 481. S. 228 relates to an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Prevarication or refusal by a witness to return direct answers to questions will not render him liable to punishment under this section, or under S. 228, Penal Code.—Pandu bin Vithoji; 4 Bomb., 7, *Crown Cases;* Choto Hurree Paramanick Tantee, 15 W. R., 5.

An application for the transfer of a suit from a particular Court, on the ground of a probable miscarriage of justice, is not a contempt.—Kadar Buksh, 4 Panj. Rec., 64

An irrelevant question put to a witness cannot amount to a contempt under S. 228, Penal Code, though a persistence in vexatious or irrelevant questions after warning might amount to a contempt.—Azeem-oolla, 2 Panj. Rec., 80.

A Criminal Court acting under S. 480 should specifically record its reason for inflicting a fine, and the facts constituting the contempt, with any statement the offender may make, together with the finding and sentence.—Fanchanada Tambiran, 4 Mad., 229.

A contempt is by law made promptly punishable by the Court before which it is committed; but where a Magistrate, to whom the case has been referred, refuses to act, and the Court referring the cases takes no further notice, another and a superior Court cannot revive the matter.—3 W. R., 11, C. L.

Proceedings under S. 480 constitute a trial, and therefore orders so passed are subject to appeal under the rules laid down for appeals.—K. Chapper Menon, 4 Mad., 126. An appeal is allowed against every conviction and sentence under this Chapter. Provision is also made by S. 486 for the Courts to which such appeals shall lie.

Sch. V, No. 38 contains a form of warrant of commitment in cases of contempt dealt with under S. 480 when a fine has been imposed.

Since in cases of contempt a sentence of imprisonment in default of payment of fine must be undergone in the Civil Jail, rations must be supplied to the convict as they are supplied to prisoners in the Criminal Jail, and application should be made to the Collector for payment of the same.—3 W. R., 21, C. L.

When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant for the levy of the amount, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to the warrant, such does not bring more than fifteen days from the time of executing the bond; and in the Court of the fine not having been realised, the Court may direct the sentence of imprisonment to be carried into execution at once. S. 387.

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

(S. 435, paras. 2, 3.)

No person should be punished for contempt of Court unless the specific offence charged against him be distinctly stated, and an opportunity of answering given him. Where this had not been done, the order of fine was set aside. *In re* Pollard, L. R., 2 P. C., 106.

Procedure where Court considers that case should not be dealt with under section 480.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

(S. 436, paras. 1, 2.)

If a case be dealt with under S. 482 and the accused is an European British subject, only a Magistrate of the first class who is a Justice of the Peace and an European British subject will be competent to deal with it, as the exception contained in last para. of S. 480 has not been extended to proceedings under S. 482.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be

Ch. XXXV. — Ss. 484, 485.

deemed to be a Civil Court within the meaning of sections 480 and 482.

This section is new.

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

(S. 437.)

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

(Ss. 356, 364.)

Sch. V, No 39 contains a form of warrant of commitment of a witness refusing to answer.

The offence committed by a witness in refusing to answer a question is punishable under S. 179, Penal Code, and the procedure to be followed is laid down in Ss. 480, 482 of this Code.

A witness shall not be excused from answering any question as to any matter relevant to the matter in civil or any criminal proceeding upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to any penalty or forfeiture of any kind. Provided that no such answer, which any witness shall be compelled to give, shall subject him to any arrest

or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.—Act I, 1872 (Evidence Act). S. 132.

When a witness is cross-examined, he may be asked any questions which tend (1) to test his veracity, (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to expose him to a penalty or forfeiture. S. 146.

If any such question relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if he thinks fit, warn the witness that he is not obliged to answer it. S. 148. Certain points for the consideration of the Court in exercising such discretion are laid down in this section, and Ss. 151, 152 give further power to a Court to forbid indecent or scandalous questions to be put except under certain circumstances—also any question intended to insult or annoy or needlessly offensive in form.

Ss. 149, 150 lay down the course to be taken when any such question as is specified in S. 148 is asked without reasonable grounds for thinking that the imputation which it conveys is well founded.

But there are certain matters which certain witnesses are declared by law to be entitled to withhold. See Act I, 1872, Ss. 121, *et seq.*

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

(S. 268.)

Ch. XXXV. — S. 487.

If the accused person is an European British subject, and he has been convicted by a Magistrate or Court of Session, he has the right of appeal to the High Court. S. 408.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

(S. 473.)

The terms of S. 487 clear away many of the difficulties experienced in interpreting and acting under S. 473, the corresponding section, of the Code of 1872. The offences now excepted are those specified in S. 195 of this Code instead of the indefinite expression, offences committed in contempt of the authority of the particular Court. Again although a Magistrate, not a Presidency Magistrate, cannot himself try such a case, he can hold an inquiry and commit it to the Court of Session or High Court, although the offence may not be exclusively triable by such Court, and a Court of Session may charge a person committing such an offence and commit, or admit to bail and try him on such charge.

The disqualification is only personal. The successor in office of the particular officer can hold such a trial.—Mad. H. Ct. Pro. Oct. 2, 1877; I. L. R., 1 Mad, 305: (S. C.) Weir, 295.

A Revenue officer cannot in his capacity as Magistrate try a person for having given false evidence before him as Collector. He cannot try the case on a complaint made by himself.—Sobha, 1 Leg. Rem., 103.

It is not illegal for a Sessions Judge to hear an appeal against an order of a Magistrate convicting a person for whose prosecution the Sessions Judge had given sanction under S. 195 Kesavaiya and others. *Per* Innes and Forbes, JJ., Kernan, J. *dis.* Weir, 294.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first claas may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order

Ch. XXXVI. S. 488.

has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

(S. 536.)

If any Magistrate, not being empowered by law in that behalf makes an order for maintenance, his proceedings shall be void. S. 539 (*n*).

Acts of familiarity before the time that the bastard child could have been begotten are receivable as corroborative evidence, in confirmation of the statement of the mother "in some material particular" such as is required by the law of England.—Cole *v.* Manning. 2, Q. B. D., 611.

If a Magistrate is otherwise competent to decide a case of maintenance, he is not without jurisdiction, because he may not have been empowered to take cognizance of offences without complaint, the matter of such case not being an offence.

The fact that the man against whom the order for maintenance was passed was an European British subject and resident in another District, and that a similar application had been rightly or wrongly dismissed in that District for want of jurisdiction was held to be no bar to jurisdiction.

When the child is deaf and dumb, and shown to be unable to maintain itself, though a *major*, the father can be ordered to maintain it.—*In re* Todd, 5 All., 237.

There is no appeal against an order passed under this section; but it is subject to revision by the High Court under S. 439.—Thaku bin Ira, 5 Bomb., 81, *Crown Cases.*

An order under S. 489 must be founded on legal proof in the same proceedings, and not upon knowledge acquired by the Magistrate in another case.—Lopotee Demnee, 8 W R, 67; Gonda, 13 W. R., 19.

S. 488 does not deprive a wife of any remedy in the Civil Courts, which she would otherwise have had.—Lalla Gopeenath *v.* Mussamat Jeetun Koer, 6 W. R., 57 (*Civil Cases*); and a decision of a Civil Court that a claim for maintenance is barred by the law of limitation would not preclude the woman from applying under S. 488 of the Code of Criminal Procedure for the maintenance of the illegitimate daughter; —Meiselback, 18 W. R., 49; but a Civil Court is not competent to set aside an order for maintenance passed by a Magistrate.—Mad. H. Ct., Pro. Sept. 11, 1877, Weir, 324.

It has been held by the Calcutta High Court, in the case of Jaddo Mussulmani and another (6 W. R., 60), that a nikah marriage between Mahomedans is a marriage within the purview of Ss. 494 (adultery) and 495 (bigamy) of the Penal Code. See also Sheikh Moneeroodeen, 18 W. R, 28.

The order of a Magistrate directing a Mahomedan husband to support his wife does not deprive him of the right of divorce, and after such divorce the Magistrate's order for her maintenance cannot be enforced.—Kassam Pribhai, 8 Bomb., 95, *Crown Cases.*

The effect of a divorce by a Mahomedan husband after he had been required by a Magistrate to make an allowance to his wife was referred to the High Court by the Presidency Magistrates in the case of Abdur Ruhman *v.* Sukhina, (5 Cal. L. R., 21; (S. C.) I. L. R. 5 Cal., 558). It was held that a Magistrate was competent to try all questions which affect the right of a woman to receive maintenance, and though he cannot cancel an order for maintenance which was a proper order when passed, he can refuse to issue a warrant to enforce it. A Mahommedan wife subsequently divorced is entitled to maintenance during her *Iddut*, but an order for maintenance for a time subsequent to the expiry of the *Iddut*, is illegal.—Gholam Mohaddeen, Pet. Weir, *Sup.*, 17.

Among Jats, a "Karoo" marriage is valid, and children the offspring of such minors are entitled to inherit. Therefore a woman so married is entitled to claim maintenance from her husband.—*In re* Bahadur Singh, 5 All., 128.

The inability of a wife to live with her husband without proof of cruelty is no ground for decreeing her a separate maintenance.—Mussamut Jesmut, 6 W. R., 49.

A mere disagreement with the husband's family is no ground for applying for maintenance —Mulka, Panj. Rec., 1870, p. 36.

Where the wife, a Hindoo girl, had not left her father's house, before an order on the husband to maintain her could be passed, it was held to be requisite that there should be evidence that the husband had been called upon to remove her to his own house, and, if he did not, to make payment for her maintenance.—Mussamut Somree, 22 W. R., 30.

Where the wife refused to live with her husband because of his cruelty, and the Magistrate, being satisfied as to her complaint, directed the husband to make her an allowance, the High Court set aside the order as illegal, inasmuch as there had been no neglect or refusal on the part of the husband, such as the law requires, to maintain his wife. The Court remarked that S. 488 does not authorize a Magistrate to entertain applications for separate maintenance, on the ground of ill-treatment from wives whose husbands have not neglected or refused to maintain them, but who have of their own accord left their husband's house and protection, and to order allowances to be paid to such wives on evidence of ill-treatment.—*In re* Thompson, 6 All., 205.

The Calcutta High Court [1089, 1863] quashed the order of a Magistrate requiring a man to pay a monthly allowance to a woman until the birth of his illegitimate child, and after its birth to contribute monthly towards its support. The Court remarked that the law empowers a Magistrate to order maintenance to children, legitimate and illegitimate, against the father, and to wives against the husband; but not to unmarried woman in a state of pregnancy. See also Musst. Ladu, 3 All., 70.

Ch XXXVI. — S. 489.

An order for the maintenance of a child by monthly payments of a certain sum with a proviso that on the child attaining a certain age, the allowance shall be increased, was held to be illegal.—Musst. Munglo, 2 All., 454.

When a Magistrate, who is competent to deal with the matter, dismisses a complaint under S. 488, the District Magistrate cannot try it *de novo*. The complainant's remedy is in a superior Court. *In re* Musst. Jamotee, 1 Cal. L. R, 89.

"Such allowance shall be payable from the date of the order."

The levy by one warrant of the arrears of maintenance for fifteen months is not illegal, but only one month's imprisonment can be awarded on default.—6 Mad., xxiii, *App.*, Pro., April 19, 1871; (S. C) Weir, 322; also 7 Mad. xxxvii, *App.*, Pro., Nov. 11, 1874; (S. C.) Weir, 323.

Where arrears of maintenance had been included in a Schedule filed under the Insolvent Act, it was held that the insolvent was thereby protected from arrest or imprisonment in respect of it. Totee Beebee *v.* Abdool Khan, 5 Cal. L. R, 458; (S. C.) I. L. R, 5 Cal., 530. (?)

An order of imprisonment in anticipation of a default of payment of the maintenonce ordered is illegal.—5 Mad., xxxiv, *App.*, Pro., July 28, 1870. (S. C.) Weir, 322.

Sch. V, No. 40 prescribes a form of warrant of imprisonment on failure to pay maintenance and No. 41 of warrant to enforce the payment of maintenance by distress and sale.

It is open to the husband at any time to prove that his wife is living in adultery, and on proof thereof an order for maintenance should be cancelled.—Ishwar Bhudar, 8 Bomb., 124, *Crown Cases*. A Civil Court cannot make a declaratory order as to the paternity of the child, nor pass an order affecting an order of a Magistrate under this Chapter. The High Court can alone interfere as a Court of Revision.—Subad Dhemnee, 20 W. R., 58.

A Magistrate is not competent to demand security that a person against whom an order of maintenance has been passed will not leave the place in order to provide by anticipation for any default that may possibly occur.—Kinoo Soudagor, 24 W. R., 72.

Nor can a Magistrate enter into any question regarding the lawful guardianship of a child, when dealing with an application for maintenance. Sibdass *v.* Neelkanto Bhaishianee, I. L. R., 4 Cal, 374.

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

(S. 537.)

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identify of the parties and the non-payment of the allowance due.

Enforcement of order of maintenance.

(S. 538.)

Copies of orders of maintenance given under S. 490 have been exempted from payment of fees under the Court Fees' Act.—Govt. of India, Not. 996, June 6, 1873.

Under rules passed by the Calcutta High Court under the Court Fees' Act, S. 20. cl. 2, a fee of *one rupee* has been fixed for serving and executing a warrant for the levy of maintenance of a wife or children, and also a percentage on the amount of maintenance levied, *viz*, two per cent. on sums not exceeding Rs. 100; and when the sum exceeds Rs. 100, then two per cent. on Rs. 100, and one per cent. on the amount of excess. Such percentage is to be deducted from the proceeds of any property sold, or to be paid with the amount levied and with the other costs of process as stated in the warrant—*Cal. Gaz.*, 1874, 478; 21 W. R., 12, Rules, &c. The legality of these rules seems to be open to some doubt, since by the Court Fees' Act, S. 20, cl. 2, such rules are restricted to fees chargeable on processes *in the case of offences other than offences for which Police officers may arrest without warrant.*

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

491. Any of the High Courts of Judicature at Fort William, Madras and Bombay, whenever it thinks fit, may direct—

Power to issue directions of the nature of a habeas corpus.

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

Ch. XXXVIII.

S. 492.

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

(S. 82.)

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

Of the Public Prosecutor.

Power to appoint Public Prosecutors.

492. The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, ths Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

(Ss. 57, 58.)

Public Prosecutor may plead in all Courts in cases under his charge.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Pleaders, privately instructed, to be under his direction.

(S. 60.)

Pleader used with reference to any proceeding in any Court, means a pleader authorized under any law under the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding. S. 4 (*n*).

The Public Prosecutor may avail himself of the assistance of Counsel retained by a private individual. In so availing himself of the Counsel's services, the Public Prosecutor by no means deprives himself of the management of the case. The two may together work in harmony; if they do not, the Counsel may retire, and the prosecutor may claim to keep the further conduct of the case solely to himself.—Narayan Pendshe, 11 Bomb., 102. But see *contra*, *In re* Gangadhur Sirkar, 23 W. R., 14, in which the Calcutta High Court held, that an advocate employed by a private person might appear for the prosecution in a Court of Session without being specially empowered by the Magistrate of the District for that purpose.

S. 270 requires that in any trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

In BENGAL all Government Pleaders have been appointed to be *ex officio* public prosecutors in the District in which they may for the time being hold the office of Government Pleader.—*Bengal Gaz.*, 1881, (Nov. 21) p. 1046.

A Magistrate should not be appointed by the District Magistrate to act as a Public Prosecutor in an inquiry or trial in any matter in which he has a personal interest such as a Public Prosecutor should not have.

Ch. XXXVIII. — S. 494.

The BOMBAY High Court for this reason condemned the appointment of a Magistrate as Public Prosecutor in an inquiry held under its order in consequence of an allegation made that the confessions on the trial held by that Magistrate were the result of improper conduct on the part of the Police. The High Court further made the following observations regarding the conduct and duties of a Public Prosecutor. "It has been well said by a learned Judge (Baron Gurney, Reg. *v.* Thursfield, 8 C. & P., 269.)

'The Counsel for the prosecution has most accurately conceived his duty which is to be assistant to the Court in the furtherance of justice, and not to act as Counsel for any particular person or party.' He should not by statement aggravate the case against the prisoners (Hayes' Crim. Law, 874) or keep back a witness because his evidence may weaken the case for the prosecution. His only object should be to aid the Court in discovering truth (See *per* Vaughan, J., 9 C. and P., 23). A Public Prosecutor should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for or grasping at conviction. Reg. *v.* Kashinath Dinkar and others, 8 Bomb., 126 (See p. 153).

Effect of withdrawal from prosecution.

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

(S. 61.)

In trials before the High Court when it appears at any time before the commencement of the trial of the person charged that any charge or any portion of it is clearly unsustainable, the Judge may make on the charge an entry to that effect. Such entry shall have the effect of staying proceedings upon the charge, or portion of the charge, as the case may be S. 273.

When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so drawn. S. 240.

495. Any Magistrate inquiring into or trying any case may permit any person other than an officer of police below the rank of Police Inspector to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

(S. 59.)

See definition of "Pleader" S. 4 (*n*) given in note to S. 492 *ante*.

No person, except certain specified officers, is entitled as a matter of right to conduct a prosecution in any inquiry or trial in a Criminal Court unless permitted by the Magistrate to do so. With such permission he becomes a pleader as defined in S. 4 (*n*). With the defence it is otherwise. Every person accused before any Criminal Court may of right be defended by a pleader. S. 340.

The following rules have been issued for the guidance of Police officers in conducting prosecutions in Criminal Courts in BENGAL:

I.—A POLICE OFFICER TO ATTEND ALL CRIMINAL COURTS.—It is desirable that at the hearing of every criminal case sent up by the Police, a responsible Police officer be in attendance to conduct the prosecution if the Magistrate wishes him to do so, or otherwise to assist as he may be desired.

II.—WHAT OFFICERS TO PROSECUTE.—In cases of peculiar difficulty or great public importance, the District Superintendent or his Assistant should, unless there be good reason to the contrary, attend in person.

In ordinary cases this duty will devolve on the Court inspector.

In petty and simple cases, or when two or more Criminal Courts are sitting at one time, head constables attached to the Court may be deputed.

At subdivisions the duty will be performed by the head Police officer employed in the Court, except in such cases as it is expedient that the District Superintendent or his Assistant attend in person.

III.—PROSECUTION IN LOWER COURTS.—The first duty of the Police officer will be to make himself thoroughly acquainted beforehand with the facts of the case, and the evidence adducible in support of such facts. Ordinarily, ample time will elapse between the completion of the inquiry and the hearing of the case to enable the Court officer to make himself complete master of the contents of the special diaries. No pains should be spared for this purpose, as it is obvious that an officer who attends the Court with an imperfect knowledge of the facts that each witness is able to prove may do the case material harm. The special diaries, if carefully prepared, will generally be found to contain all the information essential for the proper conduct of the prosecution.

Ch. XXXVIII. — S. 495.

In intricate and heinous cases the officer who made the local investigation will, as a rule, himself appear as a witness; and in such cases he should arrange to see the District Superintendent and Court inspector before the Court opens, and ascertain that the strong points of the case are thoroughly understood.

IV.—Sessions Cases.—In Sessions cases either the Magistrate, or, should the Magistrate desire it, the District Superintendent, should draw up, for the guidance of the Government Pleader or other officer appointed to conduct the prosecution, a memorandum containing a concise history of the case, and of the specific facts to which each witness is able to speak. This memorandum, together with the special report or special diaries, and copies of necessary evidence, should be made over to the Government Vakeel at least three days before the day appointed for the trial, and should be returned at the close of the trial with such remarks as the prosecuting officer may wish to offer. The memorandum will be treated by the pleader or other officer as a confidential communication. The Court inspecter or Police officer acquainted with the case should be present to assist the Government Vakeel throughout the case if the Magistrate so desire. In appeals of importance the vakeel should be duly instructed, and should make himself acquainted with the contents of the file.

V.—Communication of final orders to local Police.—All final orders in cases sent up for trial, whether at the Sudder Station or at Subdivisions, should be communicated to the officer who held the inquiry. Nothing can be more discouraging to a Police officer who believes he has sent up a true case on good and sufficient evidence than to receive from the Court inspector only a brief notice that the case has been dismissed. Where errors on the part of the local police arise from want of experience or insufficient knowledge of the laws of evidence, much good would result from a careful explanation of their error by the District Superintendent. In cases when the acquittal is due to less satisfactory causes, it is the more incumbent on the District Superintendent promptly to mark his disapproval of the result by a timely warning addressed to the officer by name.

VI.—Object of rules.—Every District and Assistant Superintendent is enjoined to assist the Magistrate to the utmost of his power to give effect to the above rules. The procedure now ordered should tend at once to the more careful conduct of inquiries, the more complete preparation of special diaries, and the better exposition and understanding of the evidence at the hearing of cases: and no duties are more peculiarly the duties of a Police officer than these.

District Superintendents should, by constant supervision, see that Court inspectors do not neglect this, the most important part of their duties for the preparation of statements and registers, which can be written up equally well out of office hours, and at times when no Criminal Court is sitting.

Serious notice should be taken of any remarks made by a Magistrate to the effect that the Police officer came into a Court with an imperfect knowledge of the case, or was otherwise remiss in his duty.

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

(S. 128, para. 2; S. 194, para. 2; S. 204, para. 1; Ss. 388, 393.)

Sch V, No. 42 gives forms of a bond and bail-bond on a preliminary inquiry before a Magistrate.

Bonds and bail-bonds for personal appearance in criminal cases are exempt from Stamp duty. Court Fees' Act (VII of 1870) S. 19, cl. xv.

When a person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond. S. 518.*

When bail may be taken in case of non-bailable offence.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that

there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

(S. 128 para. 1; S. 194, para. 2; S. 389.)

Every arrest without warrant must be reported by the officer in charge of a Police station to the District Magistrate or if he so directs to the Sub-divisional Magistrate whether such person has been admitted to bail or not. S. 62. No person who has been convicted by a Police officer shall be discharged except on his own bond, or on bail or under the special order of the Magistrate. S. 63.

If upon an investigation of a cognizable offence it appears to the officer in charge of a Police station that there is not sufficient evidence or reasonable ground of suspicion to justify his forwarding the accused to a Magistrate such officer may release him on his executing a bond with or without sureties. S. 171.

A Magistrate cannot require bail from an accused person against whom he finds that the evidence is insufficient to prove an offence, merely because more evidence might turn up.—Ram Lall Tewaree *v.* Sopha Ram, 10 W. R., 34; (S. C.) 1 B. L. R., 26, *Short Notes.*

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

(Ss. 390, 508.)

The terms of S. 498 enable a Court of Session in referring a case under S. 438 to the High Court or a Court of Revision to direct that the person under sentence may be admitted to bail.

Bond of accused and sureties.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he

is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Sch V, No 42 gives the forms of a bond and bail-bond on a preliminary inquiry before a Magistrate. Bond and bail-bonds for personal appearance in criminal cases are exempt from Stamp duty.—Court Fees' Act (VII of 1870) S. 19, cl. xv.

Discharge from custody.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

(S. 394.)

Sch. V, No. 43 gives the form of warrant to discharge a person imprisoned on failure to give security.

Power to order sufficient bail when that first taken is insufficient.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

(S. 392.)

Discharge of sureties

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a

Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

(S. 395.)

CHAPTER XL.

Of Commissions for the Examination of Witnesses.

When attendance of witness may be dispensed with.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such

Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(S. 330, paras. 1, 2.)

The power to issue a commission is now conferred on a District Magistrate. If any other Magistrate requires the issue of a commission he should proceed as directed by S. 506.

Para 2 is new having been enacted in consequence of the judgment in the case of Empress *v.* Dhan Kishen Dass, 2 Leg. Rem, 93.

Ss. 188, 189 are important in connection with this section as enabling the Local Government to direct that copies of depositions made or exhibits produced before a Political officer or a judicial officer in or for a Prince or State in alliance with Her Majesty shall be used as evidence in the inquiry or trial held in the case of an offence committed by an European British subject in a foreign State in India, or a native Indian subject anywhere beyond British India in which a commission might issue for taking such evidence or to the matters to which such depositions or exhibits relate.

In connection with section 503 the terms of S. 33 of the Evidence Act (I, 1872) should be borne in mind.

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Commission in case of witness being within Presidency-town.

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine,

such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

(S. 330, Act XI, 1878; S. 35, para. 1.)

The Statute referred to in the last para. is for the punishment of offences against laws relating to the Slave trade by British subjects or other persons protected by the British Government; S. 3 enables the High Courts to obtain evidence by commission in such cases.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(S. 330, para. 4.)

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

(S. 330, para. 5.)

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

(S. 330, Act XI, 1874; S. 35, last para.)

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjournment of inquiry or trial.

This section is new. It will be observed that there is no definite limitation as in the Proviso to S. 344 for the adjournment. The discretion should be exercised in a reasonable manner so as not to subject an accused to unnecessary detention.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

(S. 323.)

The only opinion of a Civil Surgeon that can properly be received in evidence is what may have been expressed by him as a witness under the usual tests to which witnesses may have been subjected. A letter is not evidence.—Samiruddeen, 10 Cal. L. R., 11; Kaminee Dossee, 12

Ch. XLI.

S. 509.

W. R., 15; nor a *post-mortem* report unless it has been used for the purpose of refreshing his memory.

If relied on by the prosecution, this examination should be put in and read in Court before the accused is called upon for his defence. It should also be detached from the record of the preliminary inquiry, and attached to that of the trial.—Cal. H. Ct. Cir. 11, 1867; also Cir. 4, Aug. 10, 1872.

Magistrates should be required invariably to record the evidence of the Medical officer before committing to the Court of Session any case regarding an offence affecting the human body (Chapter XVI, Penal Code); for the omission to record this evidence might very possibly lead to the acquittal of an accused person in the Sessions Court, if through sickness, death, or unavoidable absence of the Medical officer, his attendance cannot be procured before that Court.—2 W. R, 6 C. L.

So where there is already sufficient *primâ facie* evidence to warrant a commitment to the Sessions Court, and the evidence of the Medical officer is likely to be of a purely formal character, and great inconvenience would result from his being summoned to a Magistrate's Court at a distance from the Sudder Station, the examination need not be taken before a Magistrate, but the attendance of the Medical officer before the Sessions Court should be ensured. Under all other circumstances, the Magistrate should invariably record the evidence of the Medical officer before himself and in the presence of the accused.—Bomb. H. Ct., Feb. 24, 1874.

It is often of the greatest importance to have had the evidence of the Civil Surgeon regularly recorded by the Magistrate holding an inquiry. It may happen that, in the exigencies of the service, the Civil Surgeon may have been removed to a distant quarter of India before the Sessions trial, and thus may be unable to give evidence before the Sessions Court. His evidence before the Magistrate, if regularly recorded, would be evidence on the trial under S. 509, and under S. 33 of the Evidence Act (I of 1872): again, if some of the accused persons have absconded so as to be beyond the immediate prospect of arrest, if the Civil Surgeon's evidence has been recorded, it may under such circumstances be received as evidence under S. 512 *post*. If these precautions are not taken, the medical evidence of a *post-mortem* may be lost or only obtainable at considerable inconvenience and expense.

"May be given in evidence in any inquiry." This evidently refers to a case in which a fresh inquiry may have been ordered in which the evidence of the Civil Surgeon if properly taken would be admissible.

The attendance of the Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorised to grant, a fee for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under Resn. Govt. of India, April 26, 1872, published at page 1388.—*Punj. Gaz.*, June 27, 1872.

Where a Medical officer other than the Civil Surgeon or officer in Medical charge of a Civil Station is summoned to give professional evidence in a Criminal Court, touching the result of a *post-mortem* examination made by him, in cases not falling within the ordinary discharge of his duties, a fee of Rs. 16 shall be allowed him in addition

to the usual expenses payable to witnesses on criminal trial, for which see S. 241 and note.—Smyth, p. 125.

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(S. 325, para 1.)

The original report should be put in as evidence. A copy is not receivable.—Bishumbar Dass, 15 W. R., 122; (S. C.) 6 B. L. R., 122, *App.*

If put in as evidence by the prosecution, the report from the Chemical Examiner should be read before the prisoner is called upon for his defence, and it should be detached from the record of the preliminary inquiry, and attached to that of the trial.—Cal. H. Ct. Cir. 11, Sept. 2, 1867; Cir. 4, Aug. 10, 1872.

Previous conviction or acquittal how proved.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

(Ss. 326, 515, last clause.)

A previous conviction or acquital for the same offence may be proved as a bar to a subsequent conviction, S. 403. A previous conviction for another offence may be proved as ground for the passing of an enhanced sentence. See S. 75, Penal Code; S. 221, last para. *ante;* Ss. 348, 310 *ante.*

Ch. XLI.

S. 512.

Ch. XLII.
S. 513.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(S. 327.)

See note to S. 509, *ante*.

It may often be very desirable to examine the witnesses for the prosecution "if it is proved that an accused person has absconded, and there is no immediate prospect of arresting him," as the evidence of an important witness may otherwise be lost by his death, and even if the accused person be arrested after a considerable time the previous depositions may be used to corroborate the evidence of the witnesses (S 157, Evidence Act) or even to refresh their memory (S. 159) if the conditions set forth in those sections of the Evidence Act exist. Great care should, however, first be taken to have it proved that an accused person has absconded, and that there is no immediate prospect of arresting him.

CHAPTER XLII.

Provisions as to Bonds.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

(S. 399.)

S. 499 relate to the execution of a bond or bail-bond.

S. 498 enables a Sessions Judge to admit a person to bail when submitting his case for revision by the High Court.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

(Ss. 396, 7, 8, paras. 1, 2; S. 502, paras. 1—5, 7; Ss. 503, 514.)

Sch. V, Nos. 44—53 contain various forms for use under this section.

From the use of the terms, 'whenever it is proved,' *primâ facie* proof, by the taking of evidence, is necessary before proceedings can be taken under S. 514—*In re* Hariram Birbhan, 11 Bom., 170.

When a Magistrate has taken a bond from any person and that person is brought before him on trial for an offence committed within the period covered by the bond, he ought, at the time of convicting for that offence to take into consideration the fact that there is an outstanding bond and to determine, once for all, whether he will proceed

Ch. XLII. — Ss. 515, 516. — Ch. XLIII. S. 517.

on it or not. The Magistrate having abstained from making any order for the forfeiture of the bond, it must be taken that he determined not to proceed on it for that particular instance of breach of the peace. That being so, it was not open to him to reconsider and add to his order. *In re* Ram Chunder Lall, 1 Cal. L. R, 134. In the matter of Parbutty Churn Bose, 3 Cal. L. R, 406.

Appeals from, and revision of orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

(S. 398, penult, para.)

The revision by a District Magistrate evidently refers either to a total or partial remission of the penalty.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

(S. 398, last para.)

CHAPTER XLIII.

Of the Disposal of Property.

Order for disposal of property regarding which offence committed

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except

when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

(S. 418; Act X, 1874, S. 38.)

When there has been an inquiry or trial, and the accused has been discharged or acquitted by a Criminal Court, that Court is bound to restore the property in dispute into the possession of the person from whom it was taken, unless such Court is of opinion that "any offence appears to have been committed" regarding it, when such order as appears right for the disposal of the property may be made. *In re* Annapurna Bai, I. L. R, Bomb, 630 where property belonging to the estate of A, a deceased person was found with B who on inquiry was acquitted by the Magistrate of having dishonestly taken it so as to amount to theft, and its restoration to B was ordered, it being held that the District Magistrate was not competent to order it to be given to A's heirs.

So the Madras High Court has held that if the accused person has been discharged, the pre-requisites of an order under S. 517 are wanting. The property should not be withheld. Pro. June 30, 1874, Weir, 260.

The Allahabad High Court has held that although the person in whose custody the property was found has been acquitted, the Magistrate is competent to pass an order regarding the disposal, if he believes that it has been stolen.—Nilambar Baboo, I. L. R., 2 All., 276

Where the accused has been convicted of taking a bribe (S. 161, Penal Code) the Magistrate cannot pass orders in respect of money produced by a witness and said to have been given as a bribe.—Mad. H. Ct., Pro., Feb. 13, 1874, Weir, 260: nor can a Magistrate deal with money so offered and order it to be given in charity.—Pro. July 20, 1875, Weir, 261.

A Government currency note was changed at the Government Treasury by a man, who was afterwards convicted of having stolen it. The note was produced in evidence at the trial, and the Sessions Judge ordered it to be returned to the original owner from whom it had been stolen. The matter was brought before the High Court or a Court of Revision, and the following judgment was delivered:—

"The Sessions Judge has decided the case upon an Illustration drawn from the Contract Act, embodying a very old rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft.

"The decision is inapplicable to the case for money, and a note of this kind is in legal view money, does not stand upon the footing of other chattels (Foster *v.* Green, 7 H. & N., 881). In the language of the English law, the property passes by mere delivery, and, in the interests of commerce ond the security of human dealing, nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule (Goodman *v.* Harvey, 4 Ad & El., 870). Here the Treasury was bound to cash the note, and the original owner has no claim against it. The order must be reversed."—Collector of Salem, 7 Madras, 233: (S. C.) Weir, 259.

When a Government currency note which had been stolen was honestly changed by a money-changer (poddar) who, when called upon, returned it to the Police, the High Court held that it should be restored to him rather than to the person from whom it had been stolen. The terms of S. 108 of the Contract Act (IX of 1872) and the definition of "goods" (S. 76) applied to it do not touch the case. The change of a currency note into money is no more a contract for sale than the payment of the same note for goods is a sale of the note for the goods, the note being paid as money, a legal tender for the amount expressed therein under S. 15, Act III of 1871. In the matter of Captain Michell, Pet. 1 Cal. L. R., 339: (S. C) I. L. R., 3 Cal., 379.

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

(S. 420.)

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

(30 and 31 Vic. c. 35, S. 10.)

This is new.

Stay of order under sections 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and modify, alter or annul such order.

(S. 419.)

The annulment of an order giving the property to a certain person may have the effect of its restoration to another. If, however, under the order of the lower Court the property has already been given, there is apparently no provision to enable the Court to compel its return. It has been held that the High Court cannot direct the restoration of property delivered by the Police under an illegal order of a Magistrate. *In re* Annapurna Bai, I. L. R., 1 Bomb., 630.

Destruction of libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

This is new.

S. 292, Penal Code, relates to the selling of obscene books, &c.

S. 293 to having in possession obscene books, &c., for the purpose of sale, &c.

S. 501 to printing or engraving matter knowing it to be defamatory.

S. 502 to selling or offering for sale such printed or engraved matter with such knowledge.

S. 272 to adulteraton of food or drink intended for sale so as to make it noxious.

S. 273 to sale or offering or exposing for sale such food or drink with knowledge of its state.

S. 274 to adulteration of drugs.

S. 275 to sale or offering or exposing for sale such adulterated drugs.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it

thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

(S. 534.)

This in the Code of 1872 used to appear in what is now Chapter XII of this Code.

A suit to set aside such an order must be brought within three years from the date on which it was passed. Limitation Act (XV, 1877) Sch. II, Art. 47.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

(S. 387, para. 2; Ss. 415, 416.)

The following instructions have been issued by the Government of Bengal (Cir. 2998, May 28, 1868) on an opinion of the Advocate-General:—

"The general rule of law with respect to moveable property found, of which the owners cannot be discovered, is, that it belongs to the finder, who may, however, be guilty of a criminal offence by appropriating it to his own use when he knows, or has the means of finding out, or does not take reasonable means to find out, the real owner. Thus, as regards the finding of hidden treasure, consisting of gold or silver coin or bullion, or of precious stones or other valuable property, the provisions of S. 2, Regulation V, 1817 (now embodied in Act VI, of 1878)

apply. If after due notification the owner of such property may not be discoverable, such hidden treasure becomes the property of the innocent finder, provided they do not exceed in amount or value the sum of one lakh of sicca rupees. By S. 7 of the same Regulation the excess above that sum is declared to be at the disposal of Government.

"Wrecks are, in first the instance, to be retained by the salvors, who have a special property in them by way of lien for the salvage. It is illegal for the Police to take salved wreck out of the possession of the salvors, though upon discovery of wrecked property in such possession, notice of the same should be given by the Police to the Magistrate of the District. If the owners come forward, the matter will be one for adjustment between the parties. If owners cannot be found, then, subject to the salvage claims, the wrecked property belongs to the State, which may sue for its recovery in the same way as the owner might have done. Where such a course is necessary, the Magistrate should give notice to the Collector, who will take the necessary legal proceedings.

"With these exceptions, moveable property found in the possession of any private person and not claimed, is the property of the innocent finder.

"The provisions of Ss. 25—27, Act V, 1861, apply to all unclaimed property of which any officer of the Police may be the finder.

"The right of the State to property which is left by deceased persons and to which there is no claimant stands on different grounds, and is not the subject of these orders."

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

(S. 417.)

If any Magistrate not empowered by law in that behalf erroneously in good faith sells property under S. 524, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*h*).

In MADRAS all Magistrates of the first class have been empowered to act under S 524 (*Gaz.*, 1873, p. 717); also in OUDH (*Gaz*, 1873, p. 3); also in BOMBAY, provided they are not Honorary Magistrates, when a special order is necessary in each case (*Gaz.*, 1873, p 16).

Ch XLIII. — S. 525. — Ch. XLIV. — S. 526.

In the PUNJAB all Senior Officers at Head-quarter Stations under the Magistrate of the District, who are Magistrates of the first class, have been vested with powers under S. 524. Such powers to be exercised only when the Magistrate of the District is absent from Head-quarters.—*Gaz.*, 1873, p 75 For these purposes the Senior Assistant Commissioner being a Magistrate of the first class shall be deemed to be the Senior Officer under the Magistrate, and if there be no such officer, the Senior Extra Assistant Commissioner being a Magistrate of the first class shall be so deemed —*Ibid.*

A Magistrate is bound to summon witnesses named by a person to prove his claim to certain property seized by the Police as property suspected to have been stolen.—Sookhun Sahoo, 18 W. R, 5.

Powers to sell perishable property

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

(S. 415, para. 2.)

If any Magistrate not empowered by law on that behalf erroneously in good faith sells property under S. 525, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*h*).

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses.

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and an order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

(S. 64.)

The powers given by this section are larger than those conferred by S. 147 of the High Courts Criminal Procedure Act (X, 1875), under

Ch. XLIV. — S. 526.

which no conviction or proceeding could be quashed "for want of form but only on the merits" which was the rule followed on writs of *certiorari* but probably the Courts will adhere to the same rule as generally embodied in S. 537, *post*.

Where a conviction has been arrived at by the Magistrate and the petitioner is actually suffering imprisonment under it, it is within the discretion of the High Court for sufficient cause shown, and on the application of the prisoner to order the case to be removed without notice to the Crown. But sufficient opportunity will be given for the law officers of the Crown to support the conviction before a final order is passed. Queen *v.* Upendronath Dass, I. L. R, 1 Cal., 356.

The powers of the High Court cannot be exercised in the case of an acquittal by a Magistrate, but only in the case of convictions or other orders by which an accused is aggrieved or injured. Corporation of Calcutta *v.* Bheekun Ram Napit, I. L. R, 2 Cal., 290. So where after hearing the evidence for the prosecution and without disbelieving it, the Magistrate decided that it did not amount to the offence charged, it was held that assuming that an error of law had been committed, the High Court had no power to issue a *mandamus* to the Magistrate to commit the accused. It was not a case in which the Magistrate had declined jurisdiction, but he had exercised his jurisdiction and heard the case.—Malcolm *v.* Gasper, I L. R., 2 Cal., 278.

The objection to the conviction must have a substantial meritorious ground and not be merely an error of form or procedure. Such cases would for example be when the Magistrate has convicted an accused person on a charge which he had no jurisdiction to hear and determine, or had awarded a sentence which he had no power to award, or had proceeded in such a manner as to afford ground for saying that the accused person had not had reasonable opportunity of defending himself. There may of course be other classes of cases in which an objection to a conviction would be entertained, when it could be said that the accused had merits. But though an accused person may have merits in the general sense of the word, and of the most substantial kind, *viz.*, that the Magistrate has come to a wrong conclusion on the question of the guilt or innocence, yet that is not a case to which *per se* a remedy can be applied by means of a *certiorari*. The law in short says that to quash a conviction, there must be merits not that whenever there are merits in the general sense of the word the conviction will be quashed. Reg. *v.* Nathalal Pitambar, 10 Bomb., 102; see also the cases cited in the note, p. 109.

The best evidence must be offered that the Jury cannot be trusted to do their duty impartially, before the High Court, on an application by the prosecution and against the wish of the accused, will order the transfer of a trial from one District to another on the ground that owing to popular excitement as to the result, a fair trial cannot be expected. There is less reason in India for such an order than in England, because the law of India imposes many safeguards against an undue bias by a Jury. There is the right of challenge, the verdict need not be unanimous, the power on the part of the Sessions Judge to refer the case to the High Court if he disagrees from the verdict, the hearing by the High Court itself and the appeal of Government against an order of acquittal. The Empress *v.* Nobogopal, Bomb., I. L. R., 6 Cal, 491.

The following case before the Calcutta High Court (Phear, *J*) July 26, 1875, reported in the *Englishman* Newspaper, is important in connection with S. 526 and the duties of Magistrates in Presidency towns—*In re* J. A. H. Louis committed under Act VI (Ben. C.), 1866.

Mr. Lowe states that the conviction was made by Mr. Marsden as a Justice of the Peace, and not as a Magistrate.

The Court intimated that, if so, that fact was unimportant. In hearing the case, and making the conviction, Mr. Marsden, whatever constituted his authority, acted as a Criminal Court, and therefore the case falls under section 147, Act X of 1875.

Mr. Lowe, addressing the Court for the prosecution, admitted that no record of the evidence taken in the Court below had been sent up, and proposed to refer to Mr. Louis' affidavit, or, in the alternative, asked that the case might stand over.

The Court thought that the affidavit ought not to be used as a substitute for the evidence taken below. The purpose of the affidavit was this: section 147 did not give the party aggrieved by the order of the lower Court an unqualified right of appeal, but empowered this Court, on good cause shown, affecting the merits, to remove the entire case to this Court for consideration and proper determination.

The petitioner's affidavit and other evidence went to show good cause; and good cause being thus *primâ facie* established, the case was transferred. On the case coming on, in consequence of the transfer, this Court would deal with it as it stood below, *i. e.*, take it as the lower Court left it, and on the materials there produced. If on these a conviction has been already come to, and this Court should find reason to consider the conviction, order or other proceeding wrong on the merits, it may quash it; and this Court may itself entertain the case, and determine it according to justice, for this purpose taking further evidence if necessary.

The Court also expressed the opinion that, in view of the enactment, section 147 of Act X, 1875, (whatever might otherwise be the case,) it was incumbent upon the Magistrate, and the judicial officer of any Criminal Court situate within the local limits of this Court's ordinary original criminal jurisdiction, to take such notes of the evidence, in every case entertained by him, as would, in the event of the case being transferred to this Court, serve to convey the substance and material part of that evidence.

ORDER. Adjourned to this day week, in order that the Magistrate's notes of evidence taken below may be returned to this Court.

After the adjournment, it appeared that no notes of evidence had been taken before the Magistrate: the conviction was therefore quashed; it was further ordered that the fine be refunded. An application for costs made by the Counsel for the petitioner was refused, the Court being of opinion that it had no power under the Act to give costs.—15 B. L. R., 14 *App*.

Although affidavits contradict the finding of a Magistrate so as to show a want of jurisdiction, they cannot be used as affording materials for reviewing his decision. When the charge is such that, if true, it would give the Magistrate jurisdiction, his decision is final. Reg. *v.* Nathalal Pitambar, 10 Bomb., 102.

In the case of the Queen *v.* Ameer Khan, 15 W. R. 69: (S. C.) 7 B L R., 240; it was held that a much stronger case must be made out to justify the transfer of a case to the High Court than would in England justify the removal of a case by *certiorari*. The matter is fully discussed and reasons given for this conclusion in the judgments of Phear and Macpherson, JJ. See Empress *v.* Nobogopal Bose, 1 L. R, 6 Cal. 491.

The High Court will always require some very strong grounds for transferring a case from one judicial officer to another, especially if the grounds are personal to such officer as it is tantamount to a severe censure on him. Shankar Araji Hoshing, 6 Bomb., 69, *Crown cases.*

Power of Governor General in Council to transfer criminal cases and appeals.

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

(S. 64A; Act XI, 1874, S. 11.)

District or Sub-divisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(S. 44, last para.; S. 47, para. 1; S. 48.)

If a Magistrate not empowered by law in that behalf erroneously in good faith withdraws a case and tries it himself, his proceedings shall not be set aside merely on the ground of his not being so empowered. S. 529 (*i*).

S. 192 empowers a District Magistrate or Sub-divisional Magistrate to transfer any case of which he has taken cognizance for inquiry or trial to any Magistrate subordinate to him, and a District Magistrate can empower any Magistrate of the first class who has taken cognizance of a case to transfer it for inquiry or trial to any other specified Magistrate competent to deal with it. Ch. XLIV. S. 528. Ch. XLV.

When a case is removed to another Magistrate, the evidence must be taken *de novo*. S. 350 applies only to inquiries and trials commenced by a Magistrate who has ceased to exercise jurisdiction and is succeeded by another Magistrate.—Khan Mahomed, 24 W. R, 53. S. 529.

Although the law does not require that the District Magistrate should state the reasons for transferring a case from one Magistrate to another, the High Court will set aside the order unless it is clear that he has not exercised a wise or proper discretion. Thus, in a case in which after hearing the evidence for the prosecution, a Magistrate expressed an opinion that it was not sufficient to support the charge, on which the District Magistrate removed the case to the file of another Magistrate, the High Court set aside that order and directed the first Magistrate to conclude the trial. *In re* Nobocoomar Banerjea, 14 W. R., 12; (S. C.) 5 B. L R., 45

Similarly in the case of Jaffir Ali and others (commonly known as the Fennuah case) the High Court held that the Magistrate acted illegally in removing, on his own motion, a case in which several witnesses had been examined by a subordinate Magistrate and without giving notice to the prisoners and hearing what they had to say in its matter. Cal. H. Ct., Feb. 27, 1877.

A Magistrate to whom a case had been transferred for trial disallowed the objection that he had no jurisdiction and proceeded to try the case. The District Magistrate withdrew the case to his own Court and finding that he had no jurisdiction stopped proceedings. The High Court held that the District Magistrate is competent to call up a case to his own Court without limitation as to the stage of the proceedings at which it may be called up and that having the case before him he could deal with the question of jurisdiction.—Vilaetee Khanum *v.* Meher Ali, 24 W. R., 4.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search-warrant, under section 98;

(*b*) to order, under section 155, police to investigate an offence;

(*c*.) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

(Ss. 32, 34, cl. ix.)

Schedules III, IV specify the ordinary powers of Magistrates of different classes and offices and the additional powers with which and by whom they may be invested.

"Good faith." Nothing is said to be done or believed in good faith which is done or believed without due care and attention. S. 52, Penal Code.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour.

(*f*) cancels a bond to keep the peace:

(*g*) makes an order under section 133 as to a local nuisance;

(*h*) prohibits under section 143 the repetition or continuance of a public nuisance;

(*i*), issues an order under section 144;

(*j*) makes an order under Chapter XII;

(*k*) takes cognizance under section 191, clause (*c*), of an offence;

(*l*) passes a sentence under section 349, on proceedings recorded by another Magistrate;

(*m*) calls under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily;

(*r*) decides an appeal;

his proceedings shall be void.

(S. 34 excepting cl. ix.)

Schedules III. IV specify the ordinary powers of Magistrates of the several classes and offices and the additional powers with which and by whom they can be invested.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division or other local area, unless it appears that such error occasioned a failure of justice.

(S. 70.)

"Failure of justice" or as put by S. 70 of the Code of 1872 "that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error."

S. 531, applies to "other proceedings" that is proceedings not an investigation, inquiry or trial of a person accused of an offence, but miscellaneous proceedings such as under Chapters VIII, X, XI, XII, XXXVI, of this Code, but it contemplates that but for the defect in local jurisdiction the Magistrate was competent to deal with the particular matter.

The introduction of the words "local area" provide for a case in which the local jurisdiction was not confined to the same Province or High Court, a defect in S. 70 of the Code of 1872, pointed out in the case of Hiramun Ayah, 21 W. R., 66, (S. C.) 22 B. L. R., 4 *App.*

When irregular commitments may be validated.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the

Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

(S. 33.)

S. 532 contemplates that the particular Magistrate was competent to deal with the offence as having taken place within the local limits of his jurisdiction or within any special jurisdiction conferred by the Code, but that he was not competent to make the commitment to the Court of Session or High Court (Jagannath, I L. R, 3 All 258) either because he was not empowered to make such commitment (S. 206) or was not a Magistrate competent to deal with the accused person, an European British subject (S. 443). When it was objected that the Magistrate had acted without jurisdiction because after examining four witnesses he discharged the accused, and then finding another witness in attendance he examined him and committed the accused for trial by the Court of Session, the Madras High Court held that the commitment was good, because there was no question regarding the jurisdiction of the Magistrate to commit, and there was nothing to show that the accused had been prejudiced by the irregularity, that being the crucial test of a commitment by a Magistrate without jurisdiction. Pro. Nov. 28, 1874. Weir, 182.

Non-compliance with provisions of section 164 or 364.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the mirits.

(S. 346, last para.)

S. 533, it will be seen, applies to a confession or statement recorded under S 164, and thus removes many of the difficulties experienced under the Code of 1872, S 346 of which failed to extend this remedial

provision to a confession or statement recorded under S. 122. See Bai Ratan 10 Bomb 166 and other caees.

It should also be noted that S. 533, confers the power on any Court, not, like S. 346 of the Code of 1872, only on a Court of Session. If the Magistrate be required to attend to give evidence, S. 121 of the Evidence Act should be borne in mind. No Judge or Magistrate shall except on order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate: but he may be examined as to other matters whilst he was so acting. *Illustration.* A on his trial before the Court of Session, says that a deposition was improperly taken by B, or the Magistrate. B cannot be compelled to answer questions as to this, except upon special order of a superior Court —It seems to have been doubted in the case of Empress *v.* Kudder Khan, I. L. R., 3 All. 573 FULL BENCH, whether the Court of Session and not the District Magistrate was a Court superior to that of a Magistrate.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceedings.

Omission to ask question prescribed by section 454, clause 2.

(S. 85.)

See note to S. 454 *ante.*

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Effect of omission to prepare charge.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

(S. 216, Exp. I, II.)

This section does not refer to the proceedings of a Court of Confirmation under Chapter XXVII, Ss. 374—380.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial by jury of offence triable with assessors

Ch. XLV.

S. 537.

Trial with assessors of offence triable by jury.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless, the objection is taken before the Court records its finding.

(S. 233, *Expl.*)

When an accused is charged at the same trial with several offences of which some are, and some are not, triable by Jury, he shall be tried by Jury for all such offences. S. 269, last clause. A Sessions Judge cannot, after trying a case by Jury and taking their verdict, before passing sentence treat the trial as had with the aid of assessors and the verdict of the Jury as the opinions of assessors, passing his own judgment on the facts. Bhootnath Dey and others 4 Cal. L. R, 405.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under their Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

(S. 203, para. 3; S. 283, para. 2; Ss. 300, 464, paras. 6, 7; Act XI, 1874, S. 41.)

"Failure of justice." This will probably be interpreted to mean, as was expressed in S. 70 of the Code of 1872, when "the accused has "been actually prejudiced in his defence, or the prosecutor in his prose-"cution by such error," prejudiced being "unfairly affected as to his defence on the merits." Deva Doyal, 11 Bomb., 237. As was further stated in that case the intention of the Legislature is to remedy defects of a formal character which may have arisen though inadvertence or neglect and which defects the law and the Legislature think ought not to be made the means of culprits escaping the just penalties of their crimes.

A Magistrate passed sentence in a case, recording it on the back of the depositions of the witnesses and the accused person was committed

to jail under a warrant addressed to the jail, but the Magistrate died without recording a formal judgment. The High Court remarked that the omission to record a judgment or formal order was no doubt an irregularity which the circumstances of the case possibly rendered unavoidable, but it was an irregularity which obviously could not prejudice the accused who had the right of appeal against the sentences passed. Mad H. Ct. Pro., Aug. 28, 1871, Weir, 283.

"Error, omission or irregularity in the charge." In this respect S. 537 would be subject to S. 232:

If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false are fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge it shall quash the conviction.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

(Act IV, 1877, S. 185, para. 5.)

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other

person appointed by such Court for that purpose, or any Judge, or any Commissioner or taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

(Act X, 1875, S. 149.)

An affidavit or declaration in writing when made for the immediate purpose of being filed or used in any Court or before the officer of any Court is exempt from stamp duty. Act I of 1879, Sch. II Art 1.

No fee is chargeable for administering the oath to a process-server regarding the manner of service of process or in the case of an affidavit made by a public officer in virtue of his office but for making all or other affidavits in a Criminal Court a fee of *one* Rupee is charged, the same to be paid by means of a Court fee stamp of not less than that value. Calcutta High Court, Rule, Sept. 20, 1878 *sanctioned by the Govr.-Genl. in Council.* Wilkins, 115.

Although affidavits may contradict the finding of a Magistrate so as to show a want of jurisdiction they cannot be used as affording materials for reviewing his decision; when the charge is such that if true it would give the Magistrate jurisdiction, his decision is final. Reg. *v.* Nathalal Pitambar, 10 Bomb., 102.

Power to summon material witness, or examine person present.

540. Any Court may, at any stage of any inquiry trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

(Ss. 192, 351.)

In forwarding an application or summons for the attendance of a witness residing in a native State, care should be take to give such a description of him that he may be easily identified. Thus, for instance, besides his name and his father's name, the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town. The probable time during which he will be detained should also be stated, and in fixing the date when his appearance is required, reasonable time should be given to allow of his being found and sent off. When practicable the *batta* allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.—Bomb. H. Ct. Cir., p. 41.

A Magistrate does not wisely exercise the discretion which S. 540 confers on him, if without good reason he allows witnesses on the

part of the prosecution to be interposed in the midst of the case of the accused. But it is entirely within the discretion of a Magistrate to admit evidence on either side, at any stage of the trial, when he may think it necessary to do so for the purposes of justice.—*In re* Kassee Singh, 21 W. R., 61.

There is nothing to prevent a Magistrate from examining as a witness for the prosecution a person who has been suspected and arrested for the offence under trial, and who has not been discharged.—Behari Lall Bose, 7 W. R., 44. So also a person apprehended by the Police and brought before the Magistrate together with the accused is a competent witness, provided that, at the time he was examined, he was not *charged* with the accused and upon his trial.—Narayan Sundar, 5 Bomb, 1, *Crown Cases.*

The Judge (and this term apparently includes a Magistrate) may, in order to discover or obtain proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness or of the parties, about any fact relevant or irrelevant; and neither the parties nor their agents shall be entitled to make any objection to any such question; nor without leave of the Court (this term expressly includes a Magistrate) to cross-examine any witness upon any answer given in reply to any such question.—Evidence Act (I, 1872), S. 165.

But where a witness has been called by the Court of its own motion and been examined, the parties are entitled to cross-examine him.

Power to appoint place of imprisonment.

541. Unless when otherwise provided by any law for the being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(S. 881).

In MADRAS, the Madras Penitentiary, the European Jail at Ootacamund and the Central Jails at Rajahmundry, Salem, Coimbatore, Trichinopoly, Vellore and Cannanore (*Gaz.*, December 24, 1872, p. 2065); in BOMBAY, the City Jail at Poona, the Jail at Yerrowla near Poona, the District Jail at Kurrachi, and the Jail at Aden (*Gaz.*. 1873, p. 99); and the District Jails at Ahmedabad, Surat and Sattara (provided that the sentence does not exceed one month) and the District Jail at Kanara (provided the sentence does not exceed three months) *Gaz.*, 1874, p. 297): in the PUNJAB, the Central Jail at Lahore, and the District Jails of Peshawur, Rawul Pindee, Mooltan, Umballa, and Delhi (*Gaz.* 1873, p. 76); in the CENTRAL PROVINCES, the Nagpore Central Jail, and the Jails at Jubbulpore and Raipore (*Gaz.*, 1873, p. 80), and in BENGAL the Presidency Jail, the Hazareebaugh Penitentiary, and the Jails at Bhaugulpore, Midnapore, Rajshahye, Cachar, Dacca, Darjeeling Chittagong, Cuttack, Tezpore, Patna and the Dinapore Lock-up (*Cal. Gaz.*, 1873, p. 18)—have all been appointed as places for the confinement of European British subjects sentenced to imprisonment.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

(Act IV, 1877, S. 139.)

Under S. 7 of the Prisoner's Testimony Act, XV of 1869, an order of the High Court used to be necessary in such cases.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

(S. 422.)

Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary. S. 361.

The Oaths' Act (X of 1873, S. 5) enacts that:—

Oaths or affirmations shall be administered to interpreters of questions put to and evidence given by witnesses, but nothing therein contained shall render ..... necessary to administer to the official interpreter of any Court, after he has entered on the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

The following forms of oaths and affirmations have been prescribed by the several High Courts.

By the CALCUTTA HIGH COURT.

Oath.

I swear that I will well and truly interpret, translate and explain

all questions and answers, and all such matters as the Court may require me to interpret, translate and explain.

So help me God.

(*Affirmation*)

I solemnly declare that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate or explain.

By the MADRAS HIGH COURT. Aug. 16 1873.

(*Oath.*)

You shall true interpretation make of the questions put to and the evidence given by the witnesses before the Court according to the best of your skill and understanding.

So help you God.

(*Affirmation.*)

I solemnly affirm in the presence of Almighty God that I will truly interpret the questions put to and the evidence given by the witnesses before the Court according to the best of my skill and understanding.

By the ALLAHABAD HIGH COURT (Cir. 4, May 2, 1873); and by the CHIEF COURT PANJAB, (Cir. X, May 8, 1873, Smyth, pp. 233, 234.

(*Oath*)

I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar So help me God.

(*Affirmation.*)

I solemnly affirm in the presence of Almighty God that I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar.

Expenses of complainants and witnesses.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any inquiry, trial or other proceeding before such Court under this Code.

(S. 421).

The following amended rules have been issued by the Government of Bengal for the expenses of complainants and witnesses attending the Criminal Courts :—

The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or any Judge, Magistrate, or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service ; (2) in all cases entered in column 5 of the Schedule appended to the

Ch. XLVI. Criminal Procedure Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate to attend under
S. 544. the provisions of S. 351 of the Code.

No payment shall be made to Government witnesses summoned at the instance of the complainant under S 361, unless the prosecution appears to the Court of Magistrate to be *in furtherance of the interests of public justice*, but under the section the Magistrates may require the complainants to pay their expenses.

Rates of Payment.

(*a*) For the ordinary labouring class of natives, two annas per diem, together with actual railway fare by the lowest class.

(*b.*) For natives of higher rank in life, third class railway fare and four annas per diem for subsistence.

(*c.*) For Europeans and natives of superior rank, second class railway fare and an allowance according to circumstances not exceeding three rupees per diem for subsistence.

(*d*) For witnesses following any profession, such as Medicine or Law, a special allowance according to circumstances.

(*e.*) For Government servants, actual travelling expenses only.

(*f.*) In districts where no railway exists, and in parts of Eastern Bengal where the only mode of travelling is by water, and in cases where persons travel by rapid *dâk* by road, the actual expenses up to a maximum limit of two rupees per boat *per diem*, and four annas per mile for travelling by road, may be paid, subject to the proviso that the travelling allowance is only to be given when the journey could not have been performed on foot, or in cases of persons whose age, position, or habits of life render it impossible for them to walk.

Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. Each person should not be allowed to charge for his own boat; and, if a passage is offered him with others, he will have no claim for travelling allowance.

The number of days which should be allowed for the passage to and from will be determined by the officer ordering the payment in each case. For this purpose a table should be prepared and kept in each Court, showing the distance of each thannah from the sudder station and subordinate stations, and the number of intermediate ferries to be crossed; the existence or absence of roads or waterways being also noted in the table.—Govt. Cir. 68, May 30, 1873.

Since the promulgation of these rules, the Lieutenant-Governor of Bengal has announced that payment of the expenses of complainants and witnesses need not be offered or made in every case covered by the rules, but it is within the discretion of the Courts to offer or make such payments, and that they should do so whenever they think it right whether an application for payment be made or not.—Govt. of Bengal, Cir. 90, July 19, 1873.

The following orders were subsequently issued in further explanation of the rules:—

The law and orders of Government leave it entirely to the discretion of the Court to pay or not to pay the expenses of witnesses, and this discretion must be exercised without reference to the fact of their

having appeared for the prosecution or defence, or any supposed estimate of the means of the accused.

Payment of witnesses' expenses by Government is limited to heinous cases, and, as a rule, if the Judge believes that the witnesses were reasonably summoned without collusion or conspiracy on their part, he should pay their expenses whether the prisoner is convicted or not; but if he thinks they are false and unnecessary witnesses engaged in a conspiracy to defeat justice, or that an unreasonable number are summoned, he may refuse the payment of their expenses.—Govt. of Bengal, Cir. 151, Dec. 16, 1873.

No necessary payment should be withheld because the budget allotment of any Court may have been expended. A fresh assignment will be made on application to Government.—Govt. of Bengal Cir. 147, Dec. 9, 1873.

The following rules on the subject are in force in MADRAS :—

The Criminal Courts are authorized to pay at the rates specified in Rule III, the expenses of complainants and witnesses in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or other public officer, or when it shall appear to the Judge or Magistrate presiding over such Court to be directly for or in furtherance of the interests of public justice; also in cases entered in column 5 of Schedule IV, appended to the Code of Criminal Procedure as non-bailable; and in all cases in which the witnesses are compelled to attend by a Magistrate under the provisions of Chapter XXVI of the Code.

II.—For the purposes of these rules, Europeans, East Indians, and natives shall be divided into three classes, and the Judge or Magistrate before whom they are required to appear, either as complainants or as witnesses, shall be careful to fix the class with due regard to the station in life occupied by each complainant or witness.

III.—Travelling allowance and *batta* shall be paid at the rates specified below :—

Travelling Allowance.	EUROPEANS OR EAST INDIANS.		
	1st Class.	*2nd Class.*	*3rd Class.*
By rail	1st class fare.	2nd class fare.	3rd class fare.
By road	8 As. per mile.	4 As. per mile.	2 As. per mile.
By sea or canal ...	Actual expenses	of passage.	
Batta not to exceed ...	3 Rs. *per diem.*	1 Re. *per diem.*	8 As. *per diem.*

Travelling Allowance.	NATIVES.		
	1st Class.	*2nd Class.*	*3rd Class.*
By rail	1st class fare.	2nd class fare.	3rd class fare.
By road	6 As. per mile.	2 As. per mile.	2 As. per mile.
By sea or canal ...	Actual expenses	of passage.	
Batta not to exceed ...	1 Re. *per diem.*	8 As. *per diem.*	4 As. *per diem.*

Ch. XLVI. — S. 544.

IV.—The distance for which mileage, and the number of days for which *batta*, should be allowed for the journey to and from the station at which the Court is held, and for attendance at Court, shall be determined by the Judge or Magistrate ordering the payment in each case.

V.—All bills for travelling allowance and *batta* to complainants and witnesses attending before the Courts of Magistrates of the second or third class shall be scrutinized by the Magistrate of the Division in which such Courts are situated, before the charges included in them are finally passed.

VI.—Whenever a Magistrate dismisses a case as frivolous or vexatious, under S. 209 of the Code of Criminal Procedure, no travelling allowance or *batta* shall be granted to the complainant in such case.—*Gaz.*, 1873, p. 1096.

The following rules are in force in BOMBAY :—

I.—The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the Schedule appended to the Criminal Procedure Code as not bailable; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of S. 351 of the Code.

(*a.*) European and East Indian witnesses in the mofussil,* when summoned by a Criminal Court to give evidence, are to be allowed their actual expenses for carriage, when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence if they demand the same.

(*b.*) European and East Indian witnesses coming from the mofussil to attend trials at the High Court. are to be remunerated as follows:—

1st Class.—Each person coming under this class to be allowed eight annas a mile as travelling expenses for himself and a servant; five rupees a day as hotel allowance while in Bombay; and two rupees for carriage hire for each day he may have to attend the High Court.

2nd Class.—Persons under this class to have their actual travelling expenses, three rupees a day as board expenses in Bombay, and one rupee palkee hire for each day of attendance at the High Court-

3rd Class.—Persons of this class to have their actual travelling expenses, and Re. 1-8 a day as boarding allowance.

NOTE.—The Magistrate or other authority who sends a witness to the High Court shall determine to which of the above classes he belongs.

(*c.*) As a general rule, Native witnesses of the better class, as Patels, Panderpeshas, Merchants, Vakeels, and persons of corresponding rank, as well as all witnesses who are in no way concerned in the case in which their evidence is given, but whose evidence is requried for furthering the ends of justice (such as attesting witnesses to depositions and request reports, provided they can read and write) are to be allowed

* Any place outside the limits of the Town of Bombay, but within the Presidency of Bombay, or any place outside the local limits of the Ordinary Original Civil Jurisdiction of the High Court at Bombay, but within the Presidency of Bombay.—*Gaz.*, 873, p. 454.

six annas a day as subsistence money, and they are also to receive railway and other travelling expenses that have been actually incurred by them, provided the same be reasonable.

(*d.*) Native witnesses of the class of cultivators and menials, who would not, under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of four annas a day, and are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable.

II.—Peculiar cases (that is cases not coming under the operations of clauses (*a*), (*b*), (*c*), and (*d*) of Rule I) are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence money or travelling allowance is demanded.

III.—When a witness lives in the same town or village in which the Court, before which he is required to give evidence, is situated, the Court may award him such sum, not exceeding four annas a day, as may compensate him for any loss he may have incurred by attendance upon the Court.

Subsistence allowance should be paid to witnesses day by day as it may become due; payment should not be deferred until the conclusion of a trial —Bomb H. Ct. Cirs., p. 42.

The following rules are in force in BRITISH BURMAH:—

I.—No expenses of complainants or witnesses in any criminal trial will be paid without a certificate from the Judge, or Magistrate, or Bench of Magistrates before whom the trial may have been held that the prosecution was deemed to be in furtherance of the interests of public justice, and that the expenses of the complainants and witnesses should therefore be borne by the State.

II.—If such certificate be granted in a "summons" case, it will be necessary for the Court granting the certificate to record its reasons for considering the case to be of such a nature. These reasons will be forwarded to the Commissioner of the Division, who will note any necessary instructions for future guidance.

III.—Witnesses summoned under S. 351 of the Criminal Procedure Code may, in special cases, be allowed their expenses, if the presiding officer certifies that their deposition was considered necessary to further the interests of public justice.

IV.—On production of the certificate, the complainants and witnesses will be entitled to receive expenses at the following scale on account of their journeys to and from the Court, and for the days during which they have been absent from their houses for the purposes of the trial.

Provided that the allowance for each day's attendance shall not be passed to Government Officers and others remunerated by a fixed salary when attending a Court at the same station as their own. Provided, further, that the allowances passed to Government servants and others receiving fixed salaries shall be calcultated by a consideration of the increased expenses actually incurred by them in consequence of their absence from home, and that the full allowance shall ordinarily only be paid to professional witnesses—such as lawyers, medical men, or merchants—in consideration of their loss of time.

1st Class.—Gazetted or Commissioned Officers of Government, European or Native gentlemen.

Actual sum spent in travelling or in conveyance to and from the Court, with an allowance according to circumstances, not to exceed, except in very special cases, Rs. 5 for each day's absence from their residence to European, and Rs 2 to Native gentlemen.

2nd Class.—Clerks and Ministerial Officers and other Government officials in a similar position. Native Officers of Regiments, Eurasian or Native Trades-people, and other persons in a similar position.

Actual sum spent in travelling, with an allowance not to exceed Rs. 3 for each day's absence from home to European or Eurasian, and Re. 1 to Native.

3rd Class.—All others not included in the above:—six annas a day, whether spent in attendance at the Court or in travelling, to those who are residents of another place than that where the Court is held; four annas a day to those who are residents of the place where the Court is held.

V.—The amount will be disbursed at the conclusion of the trials under the orders of the Judge, or Magistrate, or Bench of Magistrate, trying the case, whose duty it will be to check the statement of charges and deduct any charge which is unauthorized, or extravagant, or unsuitable to the station in life of the complainant or witness.

VI.—In cases committed to the Court of Sessions, the Magistrate who commits the case will note in the list of witnesses the class to which each belongs.

VII.—The expenditure on this account will be adjusted as a contingent charge of the Court trying the case.

VIII.—The number of days which should be allowed for the passage to and from the Court will be determined by the Judge, Magistrate, or Bench in each case. For this purpose a table shall be prepared showing the distance of the station at which Court is situate from the other stations in the district, the number of intermediate ferries to be crossed, and the existence or absence of roads or waterways.—*Gaz.*, 1873, Part IV, p. 143.

The following rules are in force in the CENTRAL PROVINCES :—

The Criminal Courts may, at their discretion, pay, at the rates specified below, the expenses of complainants and witnesses in all cases which are cognizable by the Police; in all cases entered in column 5 of the Schedule appended to the Criminal Procedure Code as not bailable; in all cases in which the witnesses are compelled to attend by the Magistrate, under Chapter XXVI of the Code of Criminal Procedure; and in cases where the prosecution is instituted or carried on by or under the orders or with the sanction of Government or any Judge, Magistrate, or public officer, or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of the public.

Class I.—Rs. 3 per diem. All Europeans and Eurasians of the higher and middle classes, and Natives of the higher classes.

Class II.—Rs. 1 per diem. Other Europeans and Eurasians, and Natives of respectabilty generally, such as zemindars and tradesmen of the better sort.

Class III.—Annas 4 per diem. Natives below the preceding class but with some status, such as inferior zemindars, petty tradesmen, &c.

Class IV.—Annas 2 per diem. All Natives not included in the above classes, such as day-labourers, &c.

The Court shall have absolute discretion to determine, for the purposes of these rules, to what class any person belongs. All persons residing within 6 miles of the Court may be considered as able to come in and return on the same day, and should, therefore, be held entitled to one day's subsistence. Those residing from 6 to 12 miles may come in one day and return the next; they should, therefore, draw two days' subsistence, and so on, an extra day for every 6 miles; or, in other words, every witness may be allowed a day's allowance for every 12 miles or part of 12 miles he has to travel.

SECRETARIAT LIBRARY

In some cases it may be found necessary to order witnesses to appear a second time. It will be for the Court to determine whether they are justified in remaining at the place where the Court sits, or should return to their homes for the time preceding the second date of hearing; in the former case they may be allowed subsistence for every day they are detained; in the latter, may be paid a second time for the journey to and from Court.

Nothing beyond actual travelling expenses shall be paid to Government servants and employés in Government offices as it is the public time, and not their own time which is taken up by their having to attend as witnesses.—*Gaz.*, 1873, p. 116.

The following rules are in force in OUDE:—

The Criminal Courts may pay, at the rates specified below, the expenses—

(*a.*) Of complainants and witnesses summoned to attend the Courts in all Sessions cases, and inquiries into cases triable by the Courts of Session or High Court (subject to the provisions of S. 359 of the Code of Criminal Procedure in respect of unnecessary witnesses for the defence).

(*b.*) Of complainants and witnesses in all warrant cases.

(*c.*) Of witnesses for the defence in those warrant cases only in which the Magistrate does not consider it necessary to act in the discretionary power granted him by S. 362 of requiring deposit of the expenses of a witness before summoning him.

Class I.—Rs. 3 per diem. All Europeans and Eurasians of the higher and middle classes, and Natives of the higher classes.

Class II.—Re. 1 per diem. Other Europeans and Eurasians and Natives of respectability, generally such as zemindars and tradesmen of the better sort.

Class III.—Annas 4 per diem. Natives below the preceding class but with some status, as inferior zemindars, petty tradesmen, &c.

Class IV.—Annas 2 per diem. All Natives not included in the above classes such as day-labourers, &c.

2. Nothing beyond actual travelling expenses shall be paid to Government servants.

3. The Courts shall have absolute discretion to determine, for the purposes of these rules, to what class any person belongs.

4. All persons residing within 6 miles of the Court may be considered as able to come in and return on the same day, and should, therefore, be held entitled to one days' subsistence. Those residing from 6 to 12 miles may come in on one day and return the next; they should, therefore, draw two day's subsistence, and so on; an extra day for every 6 miles, or in other words, every witness may be allowed a

Ch. XLVI. — S. 544.

day's allowance for every 12 miles or part of 12 miles he has to travel.

5. These instructions have reference only to the time occupied by witnesses in coming and going, and they could receive the diet-money due to their class for each additional day that they may be kept in attendance by the Court. For some cases it may be found necessary to order witnesses to appear a second time. It will then be for the Court to determine whether they are justified in remaining at the place where the Court sits, or should return to their homes for the time preceding the second date of hearing; in the former case they may be allowed subsistence allowance for every day they are detained; in the latter they may be paid a second time for the journey to and from Court.—*Oude Gaz*, Part II, p. 34.

The following rules are in force in the PUNJAB:—

The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted or carried on by, or under the orders or with the sanction of, the Government, or any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of the Schedule appended to the Criminal Procedure Code as not bailable; (3) in all cases which are cognizable by the Police; and (4) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under Chapter XXVI of the Code of Criminal Procedure.

No payment shall be made by Government to witnesses summoned at the instance of the complainant under S. 361, unless the prosecution appear to the Court or Magistrate to be in furtherance of the interests of public justice; but under this section the Magistrate may require the complainants to pay their expenses.

A.—RATES OF SUBSISTENCE ALLOWANCE, THAT IS, ALLOWANCE FOR EACH DAY'S NECESSARY ABSENCE FROM RESIDENCE AND ATTENDANCE AT COURT.

Natives.

(*a.*) For the ordinary labonring class, two annas per diem.

(*b.*) For witnesses of a somewhat higher grade, four annas per diem.

(*c.*) For witnesses not included in classes (*a*) and (*b*) a sum not exceeding Re. 1 per diem.

Europeans.

(*d.*) For ordinary European workmen, a sum not exceeding Re. 1 per diem.

(*e.*) For European tradesmen and other Europeans of similar rank, a sum not exceeding Rs. 3 per diem.

(*f.*) For witnesses of either nationality not coming within the scope of the abovementioned classes, a special allowance according to circumstances.

The Court in which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked.

B.—TRAVELLING RATES.

When the journey is made by rail, for classes (*a*) and (*b*) third class fare.

For class (*c*), second class fare.

For class (*d*), second or third class fare at the direction of the Court.

For class (*e.*), second class fare.

For class (*f*), the fare actually paid.

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court; provided the expense incurred does not exceed eight annas a mile, and provided that the journey could not have been made on foot, or in the case of persons whose age, position, or habits of life render it impossible for them to walk To natives in class (*c*) and Europeans in class (*f*) a further sum may be allowed to cover the cost of carriage hire to and from Court on the days of attendance at Court.—Smyth, pp. 123—125.

Power of Court to pay expenses or compensation out of fine.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(S. 308, paras 1, 2, 3.)

S. 250 enables a Magistrate in dismissing a summons case which in his opinion has been brought on a frivolous or vexatious complaint to order the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation not exceeding fifty Rupees, as he thinks fit.

An order directing the accused on conviction to pay the complainant a certain sum is illegal. The Magistrate should pass a sentence of fine, and then direct that out of the sum realized, payment should be made to the complainant of whatever amount he thinks fit. Nor can a Magistrate order the accused persons generally to pay a certain sum

Ch. XLVI. — S. 546.

as costs of the complainant. It is not a fine and the amount payable by each is undetermined.—Mohesh Mondul, 3 Cal. L. R., 404.

In the Panjab, officers have been desired to give compensation in all cases of a public character, theft, grievous hurt, &c.—Smyth, p. 114.

The grounds upon which compensation has been awarded should be distinctly stated [Bishonath Mundul, 2 W. R., 58], as well as the specific sums to be paid to each individual, if there are more complainants than one —5 W. R., 20, C. L.

In any case where the prosecution is on the part of Government, it shall be competent to the Magistrate, if the accused be convicted, to order that the fees which are chargeable under the rules framed under the Court Fees. Act, but have not been paid because the prosecution was by Government, shall be paid by the accused or any of them in like manner as if such fees had been paid by the prosecutor in the first instance.—21 W. R., 12, Rules, &c.; *Cal. Gaz.*, 1874, p. 478. This rule would, however, apply only to non-coguizable cases for which alone rules can be made.—See Court Fees Act (VII, 1870), S. 20, Cl. ii.

A Magistrate cannot order that a portion of the fine imposed by him shall be paid to the Ameen employed to hold a local inquiry in the case. It can be paid only to the person who has been injured.—Moorut Lall, 6 W. R., 93.

An award of compensation should be passed in the presence of the accused person, and be a part of the sentence or order made upon conviction. It should also be formed on a statement of the loss, damage, or expenses incurred at the trial. The complainant should, when under examination, state on what grounds he applies for compensation, and the accused will then have the opportunity of disproving his statement, for the accused person has clearly an interest in this, since the award in favour of the complainant is to form an ingredient in his punishment on conviction.—Gour Churn Dass, 11 W. R., 53.

Where no order for compensation was proved as part of the sentence, but the fine imposed was realised and credited to Government; the Madras High Court held that an order passed by the Magistrate subsequently on a petition of the complainant awarding him as compensation part of the fine was not illegal, notwithstanding the terms of S. 369 of the Code and the judgment of the Calcutta High Court just quoted in the case. of Gour Churn Dass, 11 W. R., 53.—Mad. H. Ct. Pro. March 13, 1878, Weir, 232.

If the fine has been paid away, there is no mode of compelling its refund on the reversal of the award. The payment should have been withheld until the expiry of the period specified in the last para of S. 545. If an appeal be preferred, the Appellate Court can order the sentence to be suspended as to the paying over the fine to the party injured until after the decision of the appeal. The Court of first instance should always inform the Appellate Court of such an order, so that payment may be suspended.—6 W. R., 4, C. L.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall

take into account any sum paid or recovered as compensation under section 545.

(S. 308, last para.)

The "taking into account," referred to in S. 546, means that any sum awarded as compensation by the Magistrate is to be taken into consideration at the time of awarding damages in any subsequent civil suit, not that it is to be deducted from any sum that may be given as damages in such suit.—Love, 22 W. R, 336, Civil.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

This section is new. It would apply to enforcement of an order of maintenance, S. 490 It may be held to authorize an appellant to order repayment of money erroneously paid by an order of the Court of first instance on reversal of that order and thus to overrule 6 W. R., 4 C. L. quoted at the end of the note to S. 545 *ante*.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

(S. 201, 276; Act XI, 1874, S. 25.)

Formerly an application for any such copies must have been made on a paper bearing a stamp of one anna—Act VII, 1870, Sch. II, Art. 1 (*a*), but these fees under the Court Fees' Act have been remitted.—*Gaz. of India*, 1873, p. 530. Copies of such papers, unless specially exempted by the Magistrate, will be charged at the rate of eight annas for every three hundred and sixty words or fraction of three hundred and sixty words.—*Ibid*, Sch. I, Art. 9.

Section 548 is subject to the following:—

In exercise of the power conferred by the Court Fees' Act (VII. of 1870) S. 35, the Governor General in Council has remitted the fees leviable on account of the judgment or order passed by a Criminal Court and of a Judge's charge to the Jury furnished on the application of any part affected by such judgment or order, provided that such person is in Jail, or the Court, for some special reason, sees fit to grant such copy free of expense.—Government of India Not. 496 dated June 6, 1873. Wilkins 107.

S. 371 *ante* moreover declares that except in a summons case a copy of the judgment or of a translation, if so required, shall be given to the accused person free of cost; or, in trials by Jury in a Court of Session, copy of the heads of the charge to the Jury.

Ch. XLVI.
S. 548.

S. 210 further provides that if the accused so requires it, a copy of the charge shall be given to the accused person free of cost if the Magistrate finds that there are sufficient grounds for committing him for trial to the Court of Session or High Court; and S. 219 enables the accused, if he so requires, to obtain free of cost a copy of the evidence, of any witness examined by a Magistrate after a commitment and before the commencement of the trial.

In order to aid Appellate Courts in computing the period of limitation under para. 2, S. 13 of the Limitation Act (IX, 1871), every Criminal Court, subordinate to the High Court of Bombay, has been ordered to endorse the following particulars on every copy of a judgment, order, or charge to a Jury furnished under S. 276 of the Code of Criminal Procedure, *viz*, the date on which the copy was applied for; the date on which it was ready for delivery; the date on which it was delivered. To prevent unauthorized alterations being made, the dates should be written in letters in a distinct handwriting, and such endorsement should be signed by some responsible officer of the Court on the date to which it refers.—*Bomb. Gaz.*, 1874, p. 601.

In exercise of the powers conferred by Section 35 of the Court Fees' Act, VII of 1870, the Governor General in Council is pleased to remit the fees chargeable under the said Act in respect of—

1*st*.—Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of Government before any Criminal Court.

2*nd*.—Copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceeding.

3*rd*.—Copies of judgments and depositions required by officers of the Police Department for conducting appeals on behalf of Government before any Criminal Court.—*Gaz. India*, July 21, 1879, Part I, p. 382.

On application made by the Magistrate of the District to the Sessions Judge for a copy of any judgment delivered by him, the Judge should permit a copy to be made by any person whom the Magistrate may depute for that purpose. Such copies will be granted to Magistrates and committing officers only for their information and guidance; they are not at liberty to cavil at the judgment of the Sessions Court, or enter into any discussion with the Judge upon its merits.—Cal. H. Ct. Cir. 1, 1864. When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorized charge for making the same.—Subbayya Gaundan, 1 Mad., 138.

The terms of this section apply to all Magistrates. It was held under the previously existing law that all prosecutors whose charges have been dismissed by a Presidency Magistrate are affected by the order of discharge and are therefore entitled to the copies of the orders made by and the depositions taken before the Magistrate. Empress *v.* Dinonath Roy, (1, Cal. L. R., 190; S. C.) I. L. R., 8 Cal., 166.

Delivery to Military authorities of persons liable to be tried by Court-martial.

549. The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Reg. (Bengal) XX of 1825.

Powers of superior officers of police.

550. Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

(S. 137.)

Power to compel restoration of abducted females

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful

charge of such child, and may compel compliance with such order, using such force as may be necessary.

(Act IV, 1877, S. 17.)

Compensation to person groundlessly given in charge in Presidency-town.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may in like manner, award to such of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, it it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

(Act IV, 1877, S. 242.)

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

553. With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time, to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceedings in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

(Ss. 292, 293.)

The rules and orders passed by the High Courts especially under this section; are not reproduced as they have become very numerous, and have been published in a convenient form under authority.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth Schedule with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

(Ss. 442, 493, para. 1; S. 509, para. 2.)

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

(This section is new.)

Under S. 487 a Judge or Magistrate is generally prohibited from trying any person for any offences, such as contempts of lawful authority, offences against public justice, or relating to documents specified in S. 195 when such offence is committed before himself or in

Ch. XLVI. — S. 555.

contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. But this rule is subject to the cases specially provided for in Ss 477, 480, 485.

In the case of Hem Chunder Pal, 20 W. R., 70 the Magistrate who tried the case and convicted the accused had acted under S. 159 in holding the preliminary inquiry before the trial commenced. The Calcutta High Court (*Per* Phear, J., Morris, J. concurring made the following observations:—

"The Deputy Magistrate states: 'In this, as in that case, I was the chief actor and investigator. I have in this, as in that, to separate, and so far as in me lies to banish from the record, and if it were possible, from my own recollection facts which I have seen and known, and confine myself strictly to the evidence on the record. In fact, I have to do that most difficult of all things—to, as it were, change my identity, and speak, write, and think, not in the first, but third person.'

"What was the particular obligation under which the Deputy Magistrate supposed himself to have laboured, and which constrained him to 'change,' as he says, 'his identity,' it is perhaps difficult to understand. It has been held by this Court, and is accordant with the general principles which govern the conduct of an English Court of Criminal Justice, that while a person is not necessarily disqualified from presiding as a Judge or acting as a juryman upon an inquiry into or investigation of facts, because he may have himself a witness of some of the facts which are the subject of the inquiry or investigation, if he does do so, he, so far from being under any such obligation as that which the Deputy Magistrate seems to have referred to, is bound to state to the prisoner or other person concerned, or to make known to him, so far as he can, what are the facts which he himself observed, to which he himself can bear testimony. And, moreover, the prisoner, who is being tried by a Judge in this situation, has a right, if he thinks it desirable, to cross-examine the Judge, who, under these circumstances, and to this extent, must be viewed as a witness, and his evidence should be recorded. It is quite erroneous, in our opinion, to suppose on the contrary, as the Deputy Magistrate appears to have supposed, that he was bound to keep out of sight altogether the part which he had played in the matter and to pretend (we cannot use any other word than that) that he knew nothing about the facts excepting so much as the witnesses told him in Court. It is always dangerous for any man in whose right conduct others are concerned to set up and endeavour to carry out a fiction such as this. It is most specially dangerous for a Judge, who is under the grave responsibility which attaches to the office of a criminal Judge, to attempt anything of the kind. The Deputy Magistrate, if he thought it right, as he did, to take upon himself the duty of trying the prisoners in this case, ought to have made no pretence whatever of any sort; he ought to have frankly avoided and openly stated in his Court all the part which he had taken, and the facts which he had observed, and made his own evidence part of the record in the case. The awkwardness of a criminal Judge being the principal witness in the case which he has to try, is no doubt most apparent; this, however, is a reason for his declining to try the case, not for his endeavouring to assume an unreal character."

The case of Bholanath Sen, 25 W. R., 57: (S. C.), I. L. R., 2 Cal.,

23 is also important in this respect. It was there declared that no man should sit as a Judge in a case in which he has a substantial interest.

Thus, where the accused was charged with having imposed on the Superintendent of the Jail and fraudulently getting possession of sums of money, the receipt and appropriation of which was charged against him as criminal breach of trust, it was held that as the Superintendent had a substantial interest in the matter and was by no means free from the possibility of being responsible for the money embezzled, he was disqualified to sit on the Bench of Magistrates to try the case. Bholanath Sen, 25 W. R., 57: (S. C.), I. L. R., 2 Cal., 23.

Cases occasionally occur in which a Magistrate or Judge holding the trial is in the position to give evidence or is called by the defence to give evidence. How far he is thus incapacitated has been discussed in several cases.

In the case of Mookta Singh, 13 W. R, 60: (S. C.), 4 B. L. R., 14, the following points were laid down :—

A person having to exercise judicial functions may give evidence in a case before himself when such evidence can and must be submitted to the independent judgment of other persons exercising similar function sitting with him at the same time.

A Sessions Judge is a competent witness, and the giving of evidence by him does not preclude him from dealing judicially with the evidence of which his own forms a part.

The prisoner has a right to ask to have the evidence of a Sessions Judge who is trying him taken on a point which he thinks makes in his favour.

A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of a Jury, if he has no personal or pecuniary interest in the subject of the charge.—Mookta Singh, 13 W. R., 60; 4 B. L. R., 14.

In the case of the Govt. of Bengal *v* Hira Lall Dass, 8 B. L. R., 422, the Govt. appealed against the order of the Sessions Judge on appeal, who held that the same officer having as Sub-Registrar instituted the prosecution was not competent as Magistrate to try the case.

The appeal was heard by the Chief Justice and five Judges who held, first, that the Magistrate was not prohibited by the law from trying the case. The other question then arose whether there is any general rule of law with regard to the Judge being interested which could apply and which would prevent the Sub-Registrar being the Magistrate who tried the case. The following judgment was delivered :—

Now the interest which disqualifies a Judge is not merely a pecuniary interest; that would be too limited a way of describing such an interest; but in describing it we ought rather to use the language of Norman, J., in the case of The Queen *v.* Mookta Singh (4 W. R., 15; (S. C.), 13 W. R, 601) that is to say "a personal or a pecuniary interest." A Magistrate could not try a person for an assault upon himself; and without defining precisely what amounts to personal interest, it appears to me that there must be either a personal or pecuniary interest in order to disqualify a Judge or Magistrate from exercising the general jurisdiction which is conferred upon him. It is not a question of want of jurisdiction so much as a disability arising from interest to exercise his jurisdiction in the particular case.

Ch. XLVI. —— S. 556.

In this case I think the Sub-Registrar has not such an interest in the matter as disqualifies him from trying the case; and I may observe, with reference to some of the arguments that have been used as to the Sub-Registrar having made up his mind and that the accused would have no chance of a fair trial, that the sanction of the superior officer, the Registrar, is required before the prosecution can be instituted, and certainly I do not consider that the prosecution will not be instituted unless the Sub-Registrar has made up his mind as to the guilt of the party. It is his duty, when he comes to know that an offence has been committed to cause a prosecution to be instituted; by which I understand that there is *primâ facie* evidence of an offence having been committed, that there is that which renders it proper that there should be an inquiry, and the Registrar accordingly gives his sanction to it; and certainly, I cannot suppose that, because an officer in his position sanctions the institution of a prosecution, his mind is made up as to the guilt of the party, and that he is not willing to consider the evidence which may be produced before him when he comes to try the case. In this case there appears to be no such interest as would prevent the case from going before the Magistrate as the trying authority; but, as I have already said, it would be better, where it can be avoided, that it should not be done, and it may very well be that the Court in its discretion would in similar cases direct the transfer of the case, in order that it should be tried by some other officer.

The case of Het Lall Roy, 22 W. R., 75 is somewhat similar. It was there held that when the District Magistrate took an active part, if not in instituting the prosecution, yet in inviting in a somewhat special manner and in procuring the evidence on which the prosecution was to be placed and was in fact afterwards instituted, and he directed the prosecution taking evidence of witness before he transferred cases to various Magistrates for trial, it was not desirable or fair to the Magistrate himself that he should hear the appeals which were consequently transferred to the Sessions Court.

Power to decide language of Courts.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

(S. 337.)

Hindee has been declared by the Government of Bengal to be the language in ordinary use in the Colehan. (Not., April 26, 1867); also in the hill portion of the District of Darjeeling (*Cal. Gaz.*, p. 1873, 116); and Assamese in the Districts of Kamroop, Durrung, Nowgong, Seebsagor, and Lukhimpore (*Ibid*, p. 912).

In all the Districts of the Patna Division, that is, in Patna, Shahabad, Gya, Tirhoot, Sarun, Nagree has been declared to be the character to be used in all Court documents, the issue of such documents, except exhibits, in the Persian character being forbidden.—Govt. Bengal, Resn. April 18, 1880.

557. All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised from time to time as occasion requires.

Powers of Governor General in Council and Local Government exercisable from time to time.

(Ss. 3, 539.)

558. The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Pending cases.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a*).—*Statute.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(*b*).—*Acts of the Governor General in Council.*

Number and year	Subject.	Extent of repeal.
XXIII of 1840...	Execution of process	So much as has not been repealed.
XLV of 1860 ...	Penal Code	The illustration to section 214.
V of 1861 ...	Police Act	Section 6 and the last nine words of section 24. Section 35, down to and including the words "Provided that."
XVIII of 1862...	Criminal Procedure, Supreme Courts ...	So much as has not been repealed.
VI of 1864 ...	Whipping	Section 7.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulation XX of 1825.
X of 1872 ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Bengal Regulation XX of 1825.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX of 1875 ...	Central Provinces Laws	So far as it relates to Bengal Regulation XX of 1825.
XVIII of 1876...	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates	The whole Act except section 57.
XXI of 1879 ...	Extradition	Chapter III.
X of 1881 ...	Coroners	Sections 8 and 9.

(*c*).—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial ...	So much as has not been repealed.
III of 1872 ...	Santhál Parganas Settlement ...	So far as it relates to Act X of 1872.
IX of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II of 1869, X of 1872 and XI of 1874.
III of 1877 ...	Ajmer Laws	So far as it relates to Bengal Regulation XX of 1825.

(*d*).—*Act of the Governor of Fort St. George in Council.*

Number and year.	Subject.	Extent of repeal.
VIII of 1877 ...	Police...	Section 9.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this Schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.

CHAPTER V.—ABETMENT.—*Continued.*

1	2	3	4	6	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence committed.	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER V.—ABETMENT.—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence be not committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment of either description for 3 years and fine.	The Court by which the offence abetted is triable.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation for life.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If the offence be not committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant	Not bailable.	Not compoundable	Death, or transportation for life, and forfeiture of property.	Court of Session.
121 A	Conspiring to commit certain offences against the State.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c, with the intention of waging war against the Queen.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
123	Concealing with intent to facilitate a design to wage war.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
124 A	Exciting, or attempting to excite, disaffection.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.

126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Bailable.	Ditto.	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Fine of 500 rupees.	Ditto.
138	Abetment of act of insubordination by an officer soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
146	Rioting.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
148	Rioting, armed with a deadly weapon.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto.	The same as for the offence.	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto.	Ditto.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.

151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto.	Summons.	Bailable.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Fine of 1,000 rupees.	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Ditto.	Fine.	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
158	Being hired to take part in an unlawful assembly or riot.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	Or to go armed.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Simple Imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.

170	Personating a public servant.	May arrest without warrant.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Ch. XXXV; or, if not committed in a Court, a Presidency Magistrate or

							Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
178	Refusing oath when duly required to take oath by a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Pre-

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
							sidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
170	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of	Presidency Magistrate or Magistrate of

	use his lawful power to the injury or annoyance of any person.					1,000 rupees or both.	the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 rupees or both.	Ditto
187	Omission to assist public servant when bound by law to give such assistance.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—*Concluded.*

1	2	3	3	4	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience cause obstruction, annoyance or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life or rigorous imprisonment for 10 years, and fine.*	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto.	Ditto.	Ditto.	Ditto.	Death, or as above.*	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	The same as for the offence.*	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto.	Ditto.	According as the offence of giving such evidence is bailable or not.	Ditto.	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.

* And with whipping on a second conviction Act VI, 1864, S. 4; provided that the sentence does not exceed five years. S. 393 Code of Criminal Procedure.

CHAPTER XI.—FALSE EVIDENCE OF OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
198	Using as a true certificate one known to be false in a material point.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
200	Using as true any such declaration known to be false.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the of-	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.

	fender, if a capital offence.						
	If punishable with transportation for life or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Presidency Magistrate or Magistrate of the first class.

209	False claim in a Court of Justice.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.*	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transpotation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

* And with whipping on second conviction provided that the offence falsely charged be an unnatural offence.—Act VI, 1864, S. 4: and provided that the sentence does not exceed five years. S. 393 Code of Criminal Procedure.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.

	If punishable with transportation for life or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, with or without fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment for either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order,	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for either description for 7 years, or fine, or both.	Ditto.

	report, verdict or decision which he knows to be contrary to law.						
220	Commitment for trial or confinement by person having authority, who knows that he is acting contrary to law.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistate of the first class
	If with imprisonment for less than 10 years.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto.	Summons.	Ditto.	Ditto.	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If under sentence of death.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 year, and fine.	Ditto.
225 A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	Not bailable.	Not compoundable.	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto.	Ditto.	Bailable.	Ditto.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Ch. XXXV.
229	Personation of a juror or assessor.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the	May arrest	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description	Court of Session.

	process of counterfeiting, coin.	without warrant.				for 7 years and fine.	
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto.	Ditto.	Ditto.	Ditto.	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of Queen's coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which,	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of	Presidency Magistrate or Magistrate of

	when first possessed, the deliverer did not know to be counterfeit.					ten times the value of the coin counterfeited, or both	the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
244	Person employed in a Mint causing coin to be of different weight or composition from that fixed by law.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto.	Ditto.	Ditto.	Ditto	Ditto.	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fradulently diminishing the weight or altering the composition of the Queen's coin.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.

253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto.	Ditto.	Bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
258	Sale of counterfeit Government stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
260	Using as genuine a Government stamp known to be counterfeit.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Ma-

							gistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
275	Offering for sale or issuing from a dispensary	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

	any drug or medical preparation known to have been adulterated.						
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Fine of 500 rupees.	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*Continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
283	Causing danger, obstruction or injury in any public way or line of navigation.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Fine of 200 rupees.	Presidency Magistrate or Magistrate of the first or second class.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.	Any Magistrate.
286	So dealing with any explosive substance.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.	Presidency Magistrate or Magistrate of the first or second class.

288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant	Ditto.	Ditto.	Ditto.	Ditto.	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Fine of 200 rupees.	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
294	Obscene songs.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XIV.—OFFENCES AEFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
294 A	Keeping a lottery-office.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto.	Ditto.	Ditto.	Ditto.	Fine of 1,000 rupees.	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto.	Ditto.	Compoundable.	Ditto.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Of offences affecting Life.

302	Murder.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto.	Ditto.	Ditto.	Ditto.	Death.	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Continued.*

Of offences affecting Life—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, or fine, or both.	Court of Session.
304 A	Causing death by rash or negligent act.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto.	Ditto.	Not bailable.	Ditto.	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto	Ditto.
	It such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.

	Attempt by life-convict to murder, if hurt is caused.	Ditto.	Ditto.	Ditto.	Ditto.	Death, or as above.	Ditto.
308	Attempt to commit culpable homicide.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide.	Ditto.	Ditto.	Ditto.	Ditto.	Simple Imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life and fine.	Court of Session.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Continued.*

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By whom Court triable.
314	Death caused by an act done with intent to cause miscarriage.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
	If act done without woman's consent,	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Ditto.

318	Concealment of birth by secret disposal of dead body.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Hurt.

323	Voluntarily causing hurt.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto.	Ditto.	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto.	Ditto.	Ditto.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Continued.*

Of Hurt—Continued.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	May arrest without warrant.	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to com-	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 7 years, and fine.	Ditto.

	pel restoration of property, &c.						
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 10 years, and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 10 years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto.	Ditto.	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto.	Ditto.	Ditto.	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Continued.*

Of Hurt—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
337	Causing hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons.	Bailable.	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Of Wrongful Restraint and Wrongful Confinement.

341	Wrongfully restraining any person.	May arrest without warrant.	Summons.	Bailable.	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.

342	Wrongfully confining any person.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto.	Ditto.	Ditto.	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Continued.*

Of Criminal Force and Assault.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant.	Ditto.	Not compoundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Compoundable.	Ditto.	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Ditto.	Any Magistrate.

357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Abduction, Slavery and Forced Labour.

363	Kidnapping.	May arrest without warrant.	Warrant.	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.

* And with whipping on a second conviction. Act VI, 1864, S. 4.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*Concluded.*

Of Kidnapping, Abduction, Slavery and Forced Labour—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
368	Concealing or keeping in confinement a kidnapped person.	Ditto.	Ditto.	Ditto.	Ditto.	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for	Court of Session, Presi-

	prostitution, &c.					10 years and fine.	dency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
374	Unlawful compulsory labour.	Ditto.	Ditto.	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
				Of Rape.			
376	Rape.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.*†	Court of Session.
				Of Unnatural Offences.			
377	Unnatural offences	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.*†	Court of Session.

* And with whipping on second conviction. Act VI, 1864, S 4.

† Or both on second conviction provided that sentence does not exceed five years. Act VI, 1864, Ss. 2, 3; S. 393, Code of Criminal Procedure.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
379	Theft.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.*†	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.†‡	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.*†	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine.†‡	Court of Session.

* And with whipping on second conviction. Act VI, 1864, S. 4. † Or with whipping. Act VI, 1864, S. 2, or both on second conviction, S. 3.
‡ Or both on second conviction, provided that sentence does not exceed five years. Act VI, 1864, Ss. 2, 3; S. 339, Code of Criminal Procedure.

	theft or to retiring after committing it, or to retaining property taken by it.						

Of Extortion.

384	Extortion.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death,	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.*†	Ditto.

* Or with whipping or both on a second conviction. Act VI, 1864, Ss. 2, 3.
† Provided that sentence does not exceed five years. S. 393, Code of Criminal Procedure.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Extortion.—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	transportation for life, or imprisonment for 10 years.						
	If the offence threatened be an unnatural offence.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Transportation for life.	Court of Session.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.*	Ditto.
	If the offence be an unnatural offence.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.

Of Robbery and Dacoity.

392	Robbery.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.†‡	Court of Session, Presidency Magis-

* Or with whipping or both on a second conviction. Act VI, 1864, Ss. 2, 3.

							gistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 14 years and fine †‡	Ditto.
393	Attempt to commit robbery.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine †‡	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine.†‡	Ditto.
395	Dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†‡	Court of Session.
396	Murder in dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.†‡	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than 7 years.†‡	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than 7 years.	Ditto.
399	Making preparation to commit dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 10 years and fine.	Ditto.

† Provided that sentence does not exceed five years. S. 393, Code of Criminal Procedure.
‡ And with whipping on a second conviction. Act VI, 1864, S. 4.

CHAPTER XVII.—OFFENCES AFFECTING THE PROPERTY—*Continued.*

Of Robbery and Dacoity.—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years and fine, or both.	Any Magistrate.

404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
	Of Criminal Breach of Trust.						
406	Criminal breach of trust.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, Presidency Magistrate or Ma-

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Criminal Breach of Trust.—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	gistrate of the first or second class. Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.*	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

* Or with whipping or both on a second conviction. Act VI, 1864, Ss. 2, 3.

412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for 10 years, and fine.*‡	Court of Session.
413	Habitually dealing in stolen property.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.†‡	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	Of Cheating.						
417	Cheating.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

* Or with whipping or both on a second conviction. Act VI, 1864, Ss 2, 3. † And with whipping on a second conviction. Act VI, 1864, S. 4.
‡ Provided that the sentence does not exceed five years. S. 393, Code of Criminal Procedure.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Cheating—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
419	Cheating by personation.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistate of the first or second class.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	Of Mischief.						
426	Mischief.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Mischief—Continued.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards	* May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and ren-	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* See Act XI of 1874, section 4.

	dering it impassable or less safe for travelling or conveying property.						
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto.	Ditto.	Not bailable.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Mischief—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
438	The mischief described in the last section when committed by fire or any explosive substance	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
439	Running vessel ashore with intent to commit theft, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.	Ditto

Of Criminal Trespass.

447	Criminal trespass.	May arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass.	Ditto.	Warrant.	Ditto.	Ditto.	Imprisonment of either description for	Ditto.

						1 year, or fine of 1,000 rupees, or both.	
449	House-trespass in order to the commission of an offence punishable with death.	Ditto.	Ditto.	Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
453	Lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Continued.*

Of Criminal Trespass—Continued.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.*	Court of Session, Presidency Magistrate or Magistrate of of the first or second class.
	If the offence is theft.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 10 years and fine.*‡	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house trespass or house-breaking by	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description	Court of Session, Presi-

* Or with whipping, or both on second conviction, if offence intended be theft, or extortion.
‡ Provided that the sentence does not exceed five years. Act VI, 1864, Ss. 2, 3; S. 393, Code of Criminal Procedure.

	night.					for 3 years and fine.†	dency Magistrate or Magistrate or the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 5 years and fine.*‡	Ditto.
	If the offence is theft.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 14 years and fine.*‡	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.†‡	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

* Or with whipping, or both on second conviction, if offence intended be theft, or extortion.
† And with whipping on a second conviction, provided that the offence intended is so punishable. Act VI, 1864, S. 4.
‡ Provided that the sentence does not exceed five years. Act VI, 1864, Ss. 2, 3; S. 393, Code of Criminal Procedure.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*Concluded.*

Of Criminal Trespass—Concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	May arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.*	Court of Session.

* And with whipping on a second conviction. Act VI, 1864, S. 4; provided that the sentence does not exceed five years. S. 393, Code of Criminal Procedure.

466	Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 7 years, and fine.*	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years and fine.*	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.*	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 3 years, and fine.*	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto.	Ditto.	Ditto.	Ditto.	Punishment for forgery.	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto.	Not bailable	Ditto.	Ditto.	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a for-	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description	Ditto.

* And with whipping on a second conviction. Act VI, 1864, S. 4, provided that the sentence does not exceed five years. S. 393, Code of Criminal Procedure.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	gery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.					for 7 years and fine.	
473	Making or counterfeiting a seal, plate, &c, with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

	document is one of the description mentioned in section 466 of the Indian Penal Code.						
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years, and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
	Of Trade and Property-marks.						
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

Of Trade and Property-Marks—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto.	Summons.	Ditto.	Ditto.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit preperty or trade-mark.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
402	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.

494	Marrying again during the lifetime of a husband or wife.	Ditto.	Ditto.	Bailable.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery.	Ditto.	Ditto.	Bailable.	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XXI.—DEFAMATION—*Concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Compoundable.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto.	Ditto.	Not bailable.	Not compoundable.	Ditto.	Presidency Magistaate or Magistrate of the first or second class.
506	Criminal intimidation.	Ditto.	Ditto.	Bailable.	Compoundable.	Ditto.	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto.	Ditto.	Ditto.	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto.	Ditto.	Ditto.	Ditto.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	.....	According to the provisions of section 29 of this Code.
	If punishable with imprisonment for three years or upwards but less than seven.	Ditto.	Ditto.	Ditto. Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.	Ditto.	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons.	Bailable.	Ditto.	.....	
	If punishable with fine only.	Ditto.	Ditto.	Ditto.	Ditto.	.....	

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender; section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant; sections 83, 84 & 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164
(9) Power to authorize detention of a person during a police investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders, &c., in possession cases; sections 145, 146 and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to make orders as to local nuisances section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 144.
(6) Power to hold inquests, section 174.

(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial; section 528.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514, section 515.

SECRETARIAT

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.

- **BY THE LOCAL GOVERNMENT.**
  - (1) Power to require security for good behaviour, section 110:
  - (2) Power to make orders as to local nuisances, section 133:
  - (3) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (4) Power to make orders under section 144:
  - (5) Power to hold inquests, section 174:
  - (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:
  - (7) Power to take cognizance of offences upon complaint, section 191:
  - (8) Power to take cognizance of offences upon police reports, section 191:
  - (9) Power to take cognizance of offences upon information, section 191:
  - (10) Power to try summarily, section 260:
  - (11) Power to hear appeals from convictions by Magistrates of the second and third class, section 407:
  - (12) Power to sell property alleged or suspected to have been stolen, &c., section 524.
- **BY THE DISTRICT MAGISTRATE.**
  - (1) Power to make orders prohibiting repetitions of nuisances, section 143:
  - (2) Power to make orders under section 144:
  - (3) Power to hold inquests, section 174:
  - (4) Power to take cognizance of offences upon complaint, section 191:
  - (5) Power to take cognizance of offences upon police reports, section 191:
  - (6) Power to transfer cases, section 192.
- (1) Power to pass sentences of whipping, section 32:
- (2) Power to make orders prohibiting repetitions of nuisances, section 143:
- (3) Power to make orders under section 144:
- (4) Power to hold inquests, section 174:

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.	BY THE LOCAL GOVERNMENT.	(5) Power to take cognizance of offences upon complaint, section 191: (6) Power to take cognizance of offences upon police reports, section 191: (7) Power to take cognizance of offences upon information, section 191: (8) Power to commit for trial, section 206.
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143. (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191. (5) Power to take cognizance of offences upon police reports, section 191.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	BY THE LOCAL GOVERNMENT.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to commit for trial, section 206.
	BY THE DISTRICT MAGISTRATE.	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police report, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	BY THE LOCAL GOVERNMENT.	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section* 68.)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*), before the (*Magistrate*) of , on the day of

Herein fail not.

Dated this day of , 18

(*Seal.*) (*Signature.*)

II.—WARRANT OF ARREST.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant.*

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 18

(*Seal.*) (*Signature.*)

(*See section* 76.)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of), to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section* 86.)

I, (*name*), of , being brought before the District Magistrate of (*or, as the case may be*) under a warrant issued to compel my appearance to to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18

(*Signature.*)

I do hereby declare myself surety for the abovenamed , of , that he shall attend before in the Court of on the day of

next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18

(*Signature.*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18

(*Seal.*) (*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section* 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18

(*Seal.*) (*Signature.*)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section* 88.)

To the Police-officer in charge of the Police-station at .

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court and it has been returned to the said warrant that the said (*name of witness*) cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18

(*Seal.*) (*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VII.—Warrant in the first Instance to bring up a Witness.

(*See section* 90.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

VIII.—Warrant to search after Information of a particular Offence.

(*See section* 96.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence;

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal*) (*Signature.*)

IX.—Warrant to search suspected Place of Deposit.

(*See section* 98.)

To (*name and designation of a Police-officer above the rank of a Constable*).

Whereas information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of

forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

X.—Bond to keep the Peace.
(*See section* 106.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18

(*Signature.*)

XI.—Bond for Good Behaviour.
(*See sections* 109 *and* 110.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*) We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XII.—Summons on Information of a probable Breach of the Peace.
(*See section* 114.)

To of .

Whereas it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorized agent) at the Office of the Magistrate of on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees

(each, *if more than one*)], that you will keep the peace for the term of
Given under my hand and the seal of the Court, this day of
18

(*Seal.*) (*Signature.*)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the jail at .

WHEREAS (*name and address*) appeared before me in person (*or* by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received, and and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signatare.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section* 123)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless

he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section* 133.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager. the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the

Court of on the day of next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*) or to appear, &c.

or

I do hereby direct and require you, &c; &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18

(*Seal*) (*Signature.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section* 138.)

WHEREAS on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more Jurors*) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

. Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) *Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section* 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and

It has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safe-guard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section* 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section* 144)

To (*name description and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND &c., IN DISPUTE.

(*See section* 145.)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and resi-*

dence, or residence only if the dispute be between bodies of villagers) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXIII.—Warrant of Attachment in the Case of a Dispute as to the Possession of Land, &c.

(*See section* 146)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of].

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situated within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXIV.—Magistrate's Order prohibiting the doing of any thing on Land or Water.

(*See section* 147.)

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the

institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18

(*Seal*) (*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section* 169.)

I, (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above-said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18

(*Signature*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section* 170.)

I, (*name*), of (*place*), do hereby bind myself to attend at in the Court of , at o'clock on the day of next, and then and there to prosecute and give evidence, (*or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18

(*Signature.*)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section* 218.)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

XXVIII.—Charges.

(*See sections* 221, 222, 223.)

(I).—Charges with one Head.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

On Penal Code, section 121.

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*) :—]

On section 124.

(2) That you, on or about the day of , at , with the intention of inducing the Honourable *A. B*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(8) That you, on or about the day of , at voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(9) That you, on or about the day of , at , robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

On section 395.

[*In cases tried by Magistrates, substitute* " within my cognizance" *for* " within the cognizance of the Court of Session," *and in* (*c*) *omit* " by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 241.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*) :—]

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 302 and 304

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

(4) That you, on or about the day of , at , in the course of the inquiry into before. , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(III).—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I (*name and office of Magistrate, &c.,*) hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session [*or* { High Court, / Magistrate, } *as the case may be.*]

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you, the said Superintendent (*or* Keeper) to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections* 68 *and* 252.)

To of

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section* 326.)

To the District Magistrate of .

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXIII.—SUMMONS to ASSESSOR OR JUROR.

(*See section* 328.)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of

18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*)

XXXVI.—Warrant after a Commutation of a Sentence.

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Session held on the day of , 18 , (*name of prisoner*), (the 1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*);

This is to authorize and require you, the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section* 386.)

To (*name and designation of the Police-officer or other person, or persons, who is or are to execute the warrant*).

Whereas (*name and description of the offender*) was on the day of , 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith,) to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; return-

ing this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (*or* Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXIX.—Magistrate's or Judge's Warrant of Commitment of witness refusing to answer.

(*See section* 485.)

To (*name and designation of officer of Court.*)

Whereas (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(*See section* 488)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law ; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLI.—Warrant to enforce the Payment of Maintenance by Distress and Sale.

(*See section* 488.)

To (*name and designation of the Police-officer or other person io execute the warrant.*

Whereas an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said, sum ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLII.—Bond and Bail-bond on a preliminary Inquiry before a Magistrate.

(*See sections* 496 *and* 499)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*, charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session,

to be, and appear, before said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XLIII.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See section* 500.)

To the Superintendent (*or* Keeper) of the Jail at *or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 18

(*Signature*).

XLIV.—Warrant of Attachment to enforce a Bond.

(*See section* 514.)

To the Police-officer in the charge of the Police-station at

Whereas (*name description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his cognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him.

This is to authorize and require you to attach any moveable property of the (*name*) that you may find within the District of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLV.—Notice to Surety on Breach of a Bond.

(*See section* 514.)

To of

Whereas on the day of , 18 , you became surety for (*name* of (*place*) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLVI.—Notice to Surety of Forfeiture of Bond for Good Behaviour.

(*See section* 514)

To of

Whereas on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section* 514.)

To

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India, and whereas the said (*name of surety*) has on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section* 514.)

To (*name, description and address*).

Whereas on the day of , 18 , you entered into a bond not to commit, &c., (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(*See section* 514.)

To (*name and designation of Police-officer*) at the Police-station of

Whereas (*name and description*) did on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c., (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within

, to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See Section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper), of the said Civil Jail to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See Section* 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (*name, description and address*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See Section* 514)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or*, Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) *Signature.*

APPENDIX.

CONTENTS.

Page

Act I, 1868 (The General Clauses' Act) 631

OATHS AND AFFIRMATIONS.

Act X, 1873 (The Indian Oaths' Act) 633

EVIDENCE.

Act I, 1872 (The Evidence Act) 638
" XVIII, 1872 (The Evidence Act Amendment Act) 691
" XV, 1869 (The Prisoners' Testimony Act) 692

MISCELLANEOUS.

Act III, 1880 (The Cantonments Act) 698
" V, 1861 (For the Regulation of Police) 705
" IX, 1874 (The European Vagrancy Act) 714
" XXI, 1879 (The Foreign Jurisdiction and Extradition Act) 724
" VI, 1864 (The Whipping Act) 728
" V, 1876 (The Reformatory Schools Act) 732
" V, 1871 (The Prisoners' Act) 736
" III, 1879 (The Destruction of Records Act) 742

APPENDIX.

ACT I OF 1868.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the 3rd January* 1868.)

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

Preamble.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts: It is hereby enacted as follows:—

Short title.

I. This Act may be cited as "The General Clauses' Act, 1868."

Interpretation-clause.

II. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

Gender.

(1.) Words importing the masculine gender shall be taken to include females;

Number.

(2.) Words in the singular shall include the plural, and *vice versâ;*

"Person."

(3) "Person" shall include any company, or association, or body of individuals, whether incorporated or not;

"Year" and "month."

(4.) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar;

"Immoveable property."

(5.) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Moveable property."

(6.) "Moveable property" shall mean property of every description, except immoveable property;

"Her Majesty."

(7.) "Her Majesty" shall include Her heirs and successors to the Crown;

"British India."

(8.) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island, Singapore, and Malacca;

"Government of India."

(9.) "Government of India" shall denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

"Local Government."

(10.) "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

"High Court."

(11.) "High Court" shall mean the highest Civil Court of Appeal in such part;

"District Judge."

(12.) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

"Magistrate."

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;

"Barrister."

(14.) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

"Section."

(15.) "Section" shall denote a section of the Act in which the word occurs;

"Will."

(16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

"Oath," "swear," and "affidavit."

(17.) "Oath," "swear," and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

"Imprisonment."

(18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

"Son." "Father."

(19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

III. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation:—

Revival of repealed enactments.

(1.) For the purpose of reviving, either wholly or partially, Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose;

Commencement of time.

(2.) For the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"

Termination of time.

(3.) For the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the words "to;"

Official chiefs and subordinates.

(4.) For the purpose of expressing that law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

Successors.

(5.) For the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

Substitution of functionaries.

(6.) For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the

official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

Duty may be taken *pro rata.*

IV. Whenever, by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity.

Recovery of fines.

V. The provisions of Sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of Section sixty-one of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

In the place of s. 61 of the Code of Criminal Procedure, read s. 307, Act X, 1872, Sch. V.

Matters done under an enactment before its repeal to be unaffected.

VI. The repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

VII. *Repealed by Act I,* 1872.

VIII. *Repealed by Act I,* 1872.

ACT X OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 8TH DAY OF APRIL, 1873.)

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Oaths' Act, 1873."

Local extent.

It extends to the whole of British India, and so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with her Majesty;

Commencement.

And it shall come into force on the first day of May 1873.

Repeal of enactments.

2. The enactments specified in the Schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

Repealed by Act XII, 1873.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer by themselves or by an officer empowered by them in this behalf oaths and affirmations in discharge of the duties and in exercise of the powers imposed or conferred upon them respectively by law:—

(*a.*) All Courts and persons having by law or consent of parties authority to receive evidence;

(*b.*) The Commanding Officer of any military station, occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons:

Witnesses.

(*a*.) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence:

Interpreters.

(*b*.) interpreters of questions put to, and evidence given by, witnesses, and

Jurors.

(*c*.) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

The forms of oaths and affirmations, prescribed by several of the High Courts, are given after this Act.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witnesses in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

The evidence referred to by s. 11 must have been given under the oath or solemn affirmation contemplated by s. 8, and not under the usual form of oath or affirmation.—Sroomunt Ram Totadar, 22 W. R., 387.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irrigularity.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

The word "omission" includes any omission, and is not limited to accidental or negligent omissions. In this case the affirmation was in fact omitted to be made, although it was done deliberately and under the direction of the Judge. The intention appears to have been to provide for every omission, substitution or irregularity.—*Per* Couch, C.J., Kemp, Phear and Markby, JJ. (Jackson, J., *dis.*).—Sewa Bhogta, 23 W. R., 12.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Amendment of Penal Code, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath" the words "or affirmation" were inserted.

Official oaths abolished.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

FORMS OF OATHS AND AFFIRMATIONS.

Prescribed under the Oaths' Act (X of 1873) S. 7, for the N. W. PROVINCES (Cir. 4, May 2, 1873) and the PUNJAB; [C. C. Punjab Cir. IX, May 8, 1873.] Smyth, pp. 233, 234.—

I. (*Oath for Witnesses in Cases tried by Jury.*)

The evidence which I shall give to the Court and the Jury touching the matter in question between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help me God.

II. (*Oath for Witnesses in other Criminal Cases,*)

The evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth. So help me God.

III. (*Affirmation for Witnesses in Cases tried by Jury.*)

I solemnly affirm in the presence of Almighty God that the evidence which I shall give to the Court and the Jury, touching the matter in question between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth.

IV. (*Affirmation for Witnesses in other Criminal Cases.*)

I solemnly affirm in the presence of Almighty God that the evidence which I shall give to the Court shall be the truth, the whole truth, and nothing but the truth.

V. (*Oath for Interpreters.*)

I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar. So help me God.

VI. (*Affirmation for Interpreters.*)

I solemnly affirm in the presence of Almighty God that I shall well and truly interpret what is deposed by the witness between our Sovereign Lady the Queen and the prisoner at the bar.

VII. (*Oath for Jurors.*)

I shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence. So help me God.

VIII. (*Affirmation for Jurors.*)

I solemnly affirm in the presence of Almighty God that I shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and give true verdict according to the evidence.

The following Forms of Oaths and Affirmations have been prescribed by the MADRAS HIGH COURT (Aug. 16, 1873).

When an oath is administered, the witness, interpreter, or juror, shall be required to take the Bible in his hand, and to repeat the words "So help me God," at the same time kissing the book.

I. (*Form of Oath for a Witness.*)

The evidence which you shall give touching the matter now before the Court shall be truth, the whole truth, and nothing but the truth.

So help you God.

(*Form of Affirmation for a Witness.*)

I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth.

II. (*Form of Oath for an Interpreter.*)

(Other than an official interpreter of the Court.)

You shall true interpretation make of the questions put to and the evidence given by the witnesses before the Court according to the best of your skill and understanding.

So help you God.

(*Form of Affirmation for an Interpreter*)

I solemnly affirm in the presence of Almighty God that I will truly interpret the questions put to and the evidence given by the witnesses before the Court according to the best of my skill and understanding.

III. (*Form of Oath for a Juror.*)

You shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict give according to the evidence.

So help you God.

(*Form of Affirmation for a Juror.*)

I solemnly affirm in the presence of Almighty God that I will judge truly between the Queen and the prisoner at the bar, and will give a true verdict according to the evidence.

The following forms of oaths and affirmations have been prescribed by the CALCUTTA HIGH COURT (Section 7, Act X of 1873).

2. The same forms will be used in criminal as in civil cases.

3. Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

4. In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

(*Oath for Witnesses.*)

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God.

(*Affirmation for Witnesses.*)

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

(*Oath for Interpreters.*)

I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain.

So help me God.

(*Affirmation for Interpreters.*)

I solemnly declare that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate or explain

(Oath for Jurors.)

I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

So help me God.

(Affirmation for Jurors.)

I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.

ACT I OF 1872.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

(Received the assent of the Governor-General on the 15th March 1872.)

The Indian Evidence Act, 1872.

Preamble.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

PART I.
RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

Short title.

I. This Act may be called "The Indian Evidence Act, 1872."

Extent.

It extends to the whole of British India and applies to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator;

Commencement of Act.

and it shall come into force on the first day of September 1872:

Repeal of enactments.

II. On and from that day the following laws shall be repealed:—

(1.) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

(2.) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for; and

(3.) The enactments mentioned in the Schedule hereto, to the extent specified in the third column of the said Schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpretation-clause.

III. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court."

"Court" includes all Judges and Magistrates and all persons, except arbitrators legally authorized to take evidence.

"Facts."

"Fact" means and includes—

(1.) Any thing, state of things, or relation of things capable of being perceived by the senses;

(2.) Any mental condition of which any person is conscious.

Illustrations.

(*a.*) That there are certain objects arranged in a certain order in a certain place is a fact.

(*b.*) That a man heard or saw something is a fact.

(*c.*) That a man said certain words is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e.*) That a man has a certain reputation is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "Facts in issue" means and includes—

Any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability or disability asserted or denied in any suit or proceeding, necessarily follows.

Explanation—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document."

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence."

"Evidence" means and includes—

(1.) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence:

(2.) All documents produced for the inspection of the Court;

such documents are called documentary evidence.

"Proved."

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought,

under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

"May presume."

IV. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume."

Whenever it is directed by this Act that the Court shall presume a fact it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Chapter II.—Of the Relevancy of Facts.

Evidence may be given of facts in issue and relevant facts.

V. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b.*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

VI. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a.*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.

(*b.*) A is accused of waging war againt the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are occasion, cause, or effect of facts in issue.

VII. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a.) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

VIII. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(*g*.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(*h*.) The question is whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

(*k*.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant.

as a dying declaration under section thirty-two, clause (one), or as corroborative evidence under section one hundred and fifty-seven.

The prisoner was charged with theft (S 379, Penal Code) and dishonestly receiving stolen property (S. 411). The prosecutor who was robbed while travelling by railway reported his loss to the Railway Police Inspector at the first station at which the train stopped after being aware of the theft, the prisoner not being present. Evidence as to the report made was admitted under *Illust.* (k) of S. 8 of the Evidence Act.—*Queen* v. *Macdonald*, 10 B. L. R., 2, App.

Facts necessary to explain or introduce relevant facts.

IX. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*.) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts

(*b*.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*.) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the transaction.

Things said or done by conspirator in reference to common design.

X. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

XI. Facts not otherwise relevant are relevant—

(1.) If they are inconsistent with any fact in issue or relevant fact.

(2.) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*.) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In a trial for forgery, evidence was admitted to show that the accused was in possession of a number of other documents, apparently either forged or held in readiness for purposes of forgery. On appeal, the High Court held that this evidence had been improperly admitted and was irrelevant. The Court, *per West, J.*, made the following remarks:—"S. 11 of the Evidence Act is no doubt expressed in terms so extensive that any fact which can, by any chance of ratiocination, be brought into connection with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and so far reaching, that thus to take the section on its widest admissible sense would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a Law of Evidence is to restrict the investigations made by Courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertained only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the enquiry proceeded. That such an extreme meaning was not in the mind of the Legislature seems to be shown by several instances in the Act itself."—Parbhudas, 11 Bomb., 90.

In suits for damages, facts tending to enable Court to determine amount are relevant.

XII. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

XIII. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a.*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence.

(*b*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

XIV. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person,—or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation.—A fact, relevant as showing the existence of a relevant state of mind, must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a.*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) A is accused of fraudulently delivering to another person a piece of counterfeit coin which at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(*c.*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaint to B, are relevant.

(*d.*) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e.*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f.*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g.*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h.*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i.*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j.*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k.*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l.*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m.*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n.*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o.*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p.*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

That fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Evidence that the accused person was on a date subsequent to those specified in the charge guilty of having done similar acts is not admissible.—Empress *v.* M. J. Vyapoory Moodilliar, 8 Cal. L. R., 197; (S. C.) I. L. R., 6 Cal., 655.

Facts bearing on question whether act was accidental or intentional.

XV. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a.*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office are relevant, as tending to show that the fires were not accidental.

(*b.*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c.*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

XVI. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a.*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

XVII. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission—by party to proceeding or his agent;

XVIII. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) Persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Accounts kept on behalf of an accused person are relevant as admissions though they may not have been regularly kept in the course of business.—Harmanta Madhaji Khadkee, Bomb. H. Ct., Feb. 26, 1877.

Admission by persons whose position must be proved as against party to suit.

XIX. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C. that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

XX. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B, 'Go and ask C, C knows all about it.' C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

XXI. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1.) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty-two.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a.*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two).

(*c.*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (two).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

The purchaser at an execution sale is a representative in interest of the judgment-debtor within the terms of s. 21, and any statement made by the latter is evidence against him.—*Per* Markby and Birch, JJ., Unnopoorna Dossee, 21 W. R., 148.

XXII. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant.

XXIII. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases, when relevant.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section one hundred and twenty-six.

XXIV. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

S. 163 of the Code of Criminal Procedure declares that no Police officer or person in authority shall offer or make or cause to be offered or made any such inducement, threat or promise as is mentioned by the Indian Evidence Act, 1872, S. 24. But no Police officer or other person shall prevent, by caution or otherwise any person from making in the course of any investigation any statement which he may be disposed to make of his own free will. *Id.*

The only inducement to confess which can legally be offered is the tender of a pardon by certain judicial officers on certain conditions to a person supposed to be concerned in an offence triable exclusively by the Court of Session or High Court. Ss. 337, 338 Code of Criminal Procedure.

In the case of Dhurmo Dutt Ojha (8 W. R., 18), it appeared that the prisoners confessed on being told by the Police officer that he would get them released if they told the truth. The Calcutta High Court severely condemned such conduct as highly improper and illegal, holding that no part of the Police officer's evidence as to the discovery of facts in consequence of the confessions was legally admissible. See also Bechoo Manjee, 9 W. R., 16.

The following judgment of the Calcutta High Court expresses the law regarding the admissibility of statements made to the Police—(Case of Nobodeep Chunder Ghosamee and another, 1 B. L. R., 15, Original Side, Criminal.)

"Peacock, C. J.—Upon the questions argued before us I entertain no doubt.

"The first relates to the answer given to the Police constable when he arrested the prisoner. The answer did not amount to a confession of guilt, but was a statement of facts, which, if true, showed that the prisoner was innocent. It is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible in evidence is, that it was made in answer to a question put by the Police officer.

"The cases upon this subject in England are conflicting, but the later cases seem to show that statements made by a prisoner in answer to a question put by a Police officer are admissible in evidence. In the case of R. *v.* Beriman, 6 Cox, C. C., 388, Erle, C. J. refused to admit as evidence an answer given by a prisoner to a question put to him by a Magistrate; and a similar ruling by Wilde, C. J. is to be found in the case of R. *v.* Petitt, 4 Cox, C. C., 164. But in a later case, the Queen *v.* Cheverton, 2 F. & F., 833, Erle, C. J. admitted as evidence against the prisoner a statement which she had made in answer to questions put to her by a Police officer. In that case it appeared that Baxter, the Police officer, had said to the prisoner, 'you had better tell all about it, it will save trouble;' and then put certain questions to the prisoner, which she answered. It was held that the answers given to Baxter were inadmissible, because they had been made under the influence of something in the nature of a threat or inducement. Afterwards, another Policeman put questions to the prisoner, which she answered, and it was objected that those answers were inadmissible, as they had been made under the inducement held out by the former Police officer. Erle, C. J., after consulting Wightman, J., admitted the statements made

to the second Police officer, holding as I suppose, that the answers were not given in consequence of the inducement held out by the first officer. That is a distinct authority that statements made by a prisoner in answer to questions put by a Police officer are admissible, and it may be remarked that in that case the answers were held to be admissible, though the prisoner had not been cautioned.

"In the case of R *v.* Mick, 3 F. F., 342, it was held by Miller, J., that the confession made by a prisoner in answer to a question put to him by a Police officer was admissible. A similar decision will be found in 1 Moody, C. C, 27, in which it was held that a confession obtained without threat or promise from a boy, fourteen years old, by questions put to him by a Police officer, in whose custody the boy was on a charge of felony, and when the boy had had no food for nearly a whole day, was properly received as evidence against him. That was held by six Judges to three upon a point reserved. The majority held that the confession was rightly received, as no threat or promise had been made.

"Miller, J., in the case of R *v* Mick, to which I have referred, remarked that many Judges would not receive the evidence, and that he highly disapproved of the course the Police officer had taken in asking questions.

"Having these conflicting decisions before us, I should be disposed to act upon the decisions given in the case reserved, even if it were not borne out by every principle of common sense. If an inducement is held out to a prisoner to make a confession, by telling him he will be better off if he makes a confession, he may be induced, if he knows that circumstances are strong to lead to a presumption of guilt, to make a confession, though he is innocent.

"There may be reasonable ground against the admission of such a confession, though perhaps it would be better to admit it, and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it.

"The object of the Criminal Law is to punish the guilty, for the purpose of deterring them and others from committing offences. The object of the law of Procedure, including the law of Evidence, is, or ought to be, that the innocent shall be protected and the guilty punished. I cannot, therefore, at all agree with the remarks of Miller, J., and in the expression of his disapproval of the conduct of the Police officer on asking questions, provided he does not hold out hope or fear as an inducement to confess."

A Panchayat assembled to consider whether A had murdered B, and had not consequently disqualified himself from further social intercourse with the brotherhood. *Held*, that statements made before the Panchayat were not irrelevant under S. 24 as it was not in authority, nor was there any threat, inducement or promise made having reference to any charge against the accused.—Mohun Lall, I. L. R., 4 All., 66.

The same matter was also discussed by the Bombay High Court in the case of Reg. *v.* Navroji Dadabhai, 9 Bomb., 358 where the question of how far a person was "in authority" over the confessing person, came also under consideration. Sargent, C. J., said: The test would seem to be, had the person authority to interfere in the matter; and any concern or interest in it would appear to be sufficient to give him that authority, as in the Queen *v.* Warningham (2 Den., C. C, 447 *n*) where Baron Parke held that the wife of one of the prosecutors and concerned in the management of their business was a person in authority, and the rule is so laid down in Archbold's Criminal Practice.

The evidence given by a witness in the presence of the accused and before the committing Magistrate who, it was proved, could not be found owing to his ship having sailed, was tendered as evidence in the Sessions trial in the Calcutta High Court; but the material part relating to an admission by the prisoner was not received because the admission was stated to have been made immediately after the prisoner and others had been threatened with a loaded rifle by the witness to whom the statement was made. It was held to be immaterial that the threat was not for the purpose of extorting the confession, but in order to suppress a mutiny.—Queen *v.* Hicks, 10 B. L. R, 1, *App.*

The Sessions Judge and Assessors having found that the Police had been guilty of misconduct in producing evidence to the identification of property which was false, the High Court on appeal refused to affirm conviction which rested on uncorroborated confessions, which were retracted before the case left the Magistrate's Court.—Sofiruddin, 2 Cal. L. R, 132.

Confession to Police officer not to be proved.

XXV. No confession made to a Police officer shall be proved as against a person accused of any offence.

No statement, other than a dying declaration, made by any person to a Police officer in the course of an investigation shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused person. S. 162, Code of Criminal Procedure

But S. 25 does not prevent an accused person from proving a confession made to a Police officer by another person tried jointly with him; though such confession cannot be received as evidence against the person who made it, it may be used in evidence on behalf of another person. —Pitambar Jana, I. L. R., 1 Bomb., 61.

Where the accused went to consult as a friend a person who happened to be a Police officer unconnected with the case and attached to another Police station who had come to give evidence in another case under trial, it was held that the statement made to him was inadmissible in evidence, because it had been made to a Police officer. Ss. 25 and 26 are distinct. S. 25 excludes confessions made to a Police officer under any circumstances, and S. 26 excludes a confession made to any person while the person making it is in any position to be influenced by a Police officer unless the free and voluntary nature of the confession is secured by its being made in the immediate presence of a Magistrate, in which case a confessing person has an opportunity of making a statement uncontrolled by any fear of the Police. *In re* Hiran Mya, 1 Cal., L R., 21

Although the Deputy Commissioner of Police in Calcutta may be invested with powers of a Magistrate, he is still a Police officer and as such is not competent to record a confession. —Hurrobole Chunder Ghose, 25 W. R., 36.

When a Police officer is about to depose to a confessional statement of a prisoner, a question should be interposed, "Was a Magistrate present at that time?" If not, that confessional statement is excluded by an express provision of law.—Mad. H. Ct, Sept. 13, 1864; Weir, 356.

In two cases before the Calcutta High Court on its original criminal jurisdiction, a distinction has been drawn between a confession of guilt and an admission made to a Police officer when not under arrest. In the Queen *v.* Macdonald, 10 B. L. R., 2 *App.*, *Phear*, *J.*, held that the statement made by the prisoner to the Police officer who arrested him to the effect that a watch and Rs. 1000 said to have been stolen had been given to him by his sister, and that he had bought the chain, were admissible as evidence. *Phear*, *J.*, drew a distinction between admissions and confessions of guilt. Similarly in the case of Empress *v.* Debee Pershad, I. L. R., 6 Cal., 530, *Prinsep*, *J.*, admitted a statement made to the Police while the accused was under arrest.

The Bombay High Court has however refused to admit statements made under similar circumstances. In the case of Pandarinath, I. L. R., 6 Bomb., 34, the prisoner, while under arrest and in the custody of the Police, on being shown a cheque, said that one Kisam had given it to him. It was held that that statement was not admissible in evidence, although it was probably not intended as a confession of guilt, but was rather made by the prisoner in self-exculpation. It was nevertheless an admission of a criminating circumstance on which the prosecution mainly relied, and formed indeed the principal part of the evidence against him. Such an admission comes properly within the rule of exclusion which the Legislature has laid down with regard to confessions made by a person in custody of the Police.

Confession by accused while in custody of Police not to be proved against him.

XXVI. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

As confessions are so often obtained by undue influence, in order to give weight to those recorded under S. 26 of the Evidence Act, there should always be made a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were and how far they were quite free agents.—Kodai Kahar, 5 W. R., 6.

The mere standing-by of a Magistrate when confessions are being made to and recorded by the Police for their own use will not make those confessions evidence, for the law refers to cases where the Magistrate is himself conducting the investigation, and then, although the prisoner may be in the custody of the Police at the time, such prisoner, making a confession, is liable to have that confession used against him.—Domun Kahar, 12 W. R., 82.

S. 164 empowers any Magistrate not being a Police officer to record any confession made to him in the course of a Police investigation or at any time afterwards before the commencement of the inquiry or trial. Though the Deputy Commissioner of Police, Calcutta, may be invested with powers of a Magistrate, still he is a Police officer and consequently not competent to record a confession.—Hurribole Chunder Ghose, 25 W. R., 36.

How much of information received from accused may be proved.

XXVII. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The accused stated to the Sub-Inspector of Police that he had seized Khatu Beebee (the deceased) by the neck and pushed her forcibly down, so that she fell against a plantain tree and broke her neck; that he also struck her with his hand; that the woman then and there died, and that he then, after endeavouring to remove the body, took from it a necklace and a pair of bracelets which he concealed in the neighbouring jungle. In consequence of this information the accused was taken to the jungle pointed out by him, and he then produced, from a concealed place, the necklace and bracelets before spoken of, saying that they are the ornaments he had removed from the body of Khatu Beebee. That part of the accused's information which described his assault on Khatu Beebee, and her consequent death, related distinctly to the fact of the discovery of the ornaments, which discovery was made in consequence of that information; and the prisoner's admission as to the way he became possessed of those ornaments is a fact which the law of Evidence allows to be proved against him.—*Per* Glover, J., Kemp, J., concurring; Pagaree Shaha, 19 W. R., 51.

In the case of Dhurmo Dutt Ojha (8 W. R., 13), it appeared that the prisoners confessed on being told by the Police officer that he would get them released if they told the truth The Calcutta High Court severely condemned such conduct as highly improper and illegal, holding that no part of the Police officer's evidence as to the discovery of facts in consequence of the confessions was legally admissible. See also Bechoo Manjee, 9 W. R., 16.

The Sessions Judge refused to accept a confession as evidence under S. 30 against other persons tried at the same time for the same offence, because it had been obtained under undue influence, but he accepted it as against the confessing prisoner, because it was corroborated by external facts with which it was connected. The High Court, however, held that if it was admissible at all, it was admissible for the Court to take into consideration against the co-accused, as well as affording the strongest evidence against himself. If circumstances made it wholly or partly admissible, it ought not to have been set aside at all, but weighed for all purposes with care and discretion —Rama Birapa, I. L. R., 3 Bomb., 12.

It is not all statements connected with the production or finding of property which are admissible; those only which lead immediately to the discovery of property, and so far as they lead to such discovery are properly admissible. Whatever be the nature of the fact discovered, that fact must in all cases be itself relevant to the case, and the connection between it and the statement made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and so immediately, but not necessarily or directly connected with the fact discovered, are not to be admitted, as this would be rather an evasion than a fulfilment of the law, which is designed to guard prisoners accused of offences against unfair practices on the part of the Police. For instance, a man says, 'you will find a stick at such and such a place; I killed Rama with it.' A policeman, in such a case, may be allowed to say he went to the place indicated, and found the stick, but any statement as to the confession of murder would be inadmissible. If, instead of 'you will find,' the prisoner has said, 'I placed a knife or a sword in such a spot,' when it was found that too involved an admission of a particular act on the prisoner's part, and is admissible, because it is the information which has directly led to the discovery, and is thus directly and independently of any other statement connected with it But if, besides this, the prisoner has said what induced him to put the knife or sword where it has been found, that part of his statement, as it has not furthered, much less has caused, the discovery, is not admissible The words of S. 27 of the Evidence Act 'whether it amounts to a confession or not' are to be read as qualifying the word 'information' in the immediately preceding context, not the words 'so much;' and the effect is, that though ordinarily a confession of an accused while in custody would be wholly excluded, yet if, in the course of such a confession, information leading to the discovery of a relevant fact has been given, so much of the information as leads distinctly to this result may be deposed to, though as a whole the statement would constitute a confession which the preceding sections are intended to exclude.

In this case, as in many others, the production of articles supposed to have been made use of in committing the murder by the prisoners, is adduced as strong evidence against them. The conduct of any prisoner in relation to a relevant fact is good evidence according to S. 8 of the Indian Evidence Act; but according to Explanation 1, "the word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than those statements." It is on such a statement that the significance of the act, which it accompanies, in many cases depends; as for instance when a Police officer says to a prisoner, 'I must search your house for the stolen property,' to which the prisoner replies, 'I will give you at once all the valuables that I have in the house.' and thus gives him certain articles not stolen property, after which stolen jewels are found concealed under his hearth. But if, under cover of an explanation said to have been given by a prisoner of an act in itself ambiguous, or not so obviously connected with the fact in issue as to be relevant, it is sought to introduce a confession of a prisoner to the

Police, or made while in Police custody, the Evidence Act does not warrant its admission. The rules of exclusion and the exception to them being definitely laid down, are not to be extended to cases not properly falling within it. The giving up by a cultivator of a bill-hook, or the pointing out of a place where *bajri* appears to have been trampled, is however in itself an unambiguous act. It is in general also insignificant. It needs no explanation, and a confession accompanying it does not explain it, but is a collateral matter whose exclusion, where it is excluded, is not prevented by its being connected with matters that are not excluded.—Jora Hasji, 11 Bomb, 242.

The fact discovered must be one which of its own force, independently of the confession would be admissible evidence. The discovery of a rope was not such a fact. Its relevancy and probative force were both the offspring of the confession itself. There is some doubt as to the stones from the side of the well which were found in the well with the body. These as part of the transaction would no doubt be admissible and would if discovered in consequence of the confession probably render it admissible. Here, however, the facts of the case render it somewhat doubtful whether the discovery of the stones did not result from the finding of the body. It is perhaps safer to exclude the confessions altogether. The section is very inartistically drawn, but it seems clear that the discovery of a fact which, save for the confession, would be altogether indifferent, cannot take a confession out of the excluding rule.—Mad. H. Ct., Choda Atchama. Weir, 317.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

XXVIII. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat, or promise, in the opinion of the Court, has been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

XXIX. If such a confession is otherwise relevant, it does not become irrelevant, merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Although it is expressly declared by S. 163 of the Code that no Police officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, S. 24, but it is further provided that no Police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation any statement which he may be disposed to make of his own free will.

S. 342 declares that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and the Court shall, for the same purpose, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence. The manner in which such an examination is to be recorded is set forth in S. 364 of the Code.

Where witnesses depose to the fact that before them the prisoner admitted his guilt, they should be required to repeat the words used by the prisoner. Nothing short of the actual words given in detail in the first person, so far as it is possible to obtain them, ought ever to be relied upon as the foundation for any opinion proved by the Court, because it may turn out that the words taken together with the questions and the circumstances under which the questions were put, do not in truth amount to a confession of guilt such as the witnesses choose to represent it.—Soorjaat, 10 B. L. R., 332.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

XXX. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—'A and I murdered C.'

This statement may not be taken into consideration by Court against A, as B is not being jointly tried.

There are several considerations necessary before S. 30 can be brought into use.

I. The confession can be taken into consideration *only at the trial in which the prisoner who made it is being tried* jointly for the same offence with some other person.

Thus, where one of several prisoners tried together confessed, and was thereupon convicted and sentenced, and the trial proceeded against the others, the evidence of the confessing prisoner was taken for the prosecution. It was held that the confession could not be taken into consideration under S. 30 of the Evidence Act as the confessing prisoner was not then under trial.—Kalu Patel, 11 Bomb., 146.

II. The person who made the confession must be under trial *jointly for the same offence with* the person against whom that confession is to be used.

So where some prisoners charged with murder confessed and implicated others charged only with abetment, it was held that such confessions could not be considered against the latter. Jaffir Ali, 19 W. R., 59. See also Nur Mahomed, Panj. Rec. 1874, p. 12. And for the same reason the confession of a person charged with abetment of murder could not be taken into consideration against another tried at the same time on a charge of murder.—Amrita Govinda, 10 Bomb., 497.

So also a confession made by a prisoner charged with dacoity was held to be inadmissible against another prisoner tried on the same trial under S. 412, Penal Code, for dishonestly receiving stolen property acquired in a dacoity.—Bala Patel, I. L. R., 5 Bomb., 63.

Where in the course of the trial the Sessions Judge amended the charge so as to make it identical against all the prisoners it was held that a confession which otherwise could not have been taken into consideration against another prisoner being tried at the same time but for another offence could by this amendment of the charge be properly used against him. The following judgment was delivered:—

As to the point of the admissibility of prisoner Govind's confession as evidence against the second prisoner Babaji, we think that the Sessions Judge was justified in admitting that confession, not only against Govind, but against his fellow-prisoner. No doubt, when it was received, the two accused were before the Court on different charges, and it was received under the notion that it was evidence against Govind alone. But the Code of Criminal Procedure, by S. 228 and the following sections, provides for an amendment of the charge at any stage of the trial, and enables the Court, at its discretion, after making such amendment, to proceed with the trial as if the amended charge had been the original charge. The amendment of the charge in this case made the charge identical against both the accused. If both had been charged originally with abetment, the confession of one would have been received without question against the other. Some difficulty might indeed conceivably arise out of dealing with a case of a confession of prisoner B as evidence against prisoner A (then under trial jointly on a different charge), who, at the time when this confession was recorded, might possibly have raised an objection against its legal admissibility, or might have started questions which would have served his purpose, but for their apparent irrelevancy at that time. But looking to the principle laid down in Ss. 228 to 231, it is clear that the intention of the Legislature is, that whenever an amendment of the charge in any way tends to prejudice the prisoner, steps should be taken to prevent that consequence arising by ordering a new trial, or suspending the trial going on, to enable him to make his defence, or to examine any material witness, or to recall any witnesses already examined. The same principle extends to all instances of material prejudice arising to any one under trial from an amendment made in the course of the proceedings. If we found that the Sessions Court had overlooked this principle, that the prisoner Babaji had objected, on valid grounds, to the reception of the confession, or that this prisoner had really been prejudiced by the refusal of an adjournment, or in any other manner, we should, in a confirmation case, give the accused the full benefit of the objection. We find, however, that the prisoner Babaji, in whose favour the objection is raised here, was defended by a competent pleader, who, when the charge against Govind was amended, neither asked for a new trial, nor sought to raise any objection to the admissibility of the confession as evidence against his client. It is only in the case of charges closely related that a trial goes on forthwith after an amendment; and in this instance the original and amended charges are so nearly related, that in the absence of technical objections urged on behalf of the prisoner Babaji, the trial might, without any unfairness, be deemed, for the reception of evidence and all other purposes, to have been a trial on the amended charge from its commencement. It was only when he came to draw up his judgment that the Judge took Govind's confession into consideration against Babaji, and at that moment they were both jointly

under trial for the same offence. Therefore, the objection must be disallowed, although, at first sight, it might seem to possess some force.—Govind Bapli Paul, 11 Bomb., 278.

III. The confession must "affect" the person who has made it and the person against whom it is used.

The true test to apply is whether the confession is of itself sufficient to justify the conviction of the person making it of the offence for which he is jointly tried with the other person or persons against whom it is tendered. The confession must "tar" himself and the person or persons he implicates "with one and the same brush."—Gunraj and others, 1 Leg. Rem., 211.

Before the confession of a person tried jointly with the prisoner can be taken into consideration against him, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. It is this implication by himself by the confessing prisoner which is intended by the Legislature to take the place, as it were, of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other. In this case the prisoners keep themselves out of all complicity in the actual facts which are charged against all the prisoners jointly, and upon which the appellants have been convicted with the others, so that the statements which these men make against the appellants, are simply, so far as the charge upon which they have been convicted is concerned, statements made without either the sanction of an oath, or of that substitute for that sanction already referred to, *viz.*, the implication of themselves on the charge upon which they have been tried with the appellants—in short, without the application of any test of truth whatever.—Belat Ali, 10 B. L. R., 453. Baijoo Chowdhry, 25 W. R., 45.

Statements made by prisoners under trial inculpating others but exculpating themselves, were held not to come within S. 30.—Keshub Bhoonia, 25 W. R., 8: Nur Bux Haji, I. L. R., 6 Cal., 279.

A confession admissible under S. 30 is evidence both against the prisoner who made it and against another charged jointly with the same offence, but a conviction against the latter if uncorroborated is illegal. A Sessions Judge should direct the Jury to acquit a prisoner against whom there is nothing but the confession of a fellow prisoner.—Ashootosh Chuckerbutty, I. L. R., 4 Cal. 484, FULL BENCH.

The confession of a fellow prisoner which may under S. 30 be taken into consideration stands no higher than the evidence of an accomplice. In addition to the infirmity inherent in an accomplice's testimony it is neither sanctioned by an oath, nor can it be tested, developed or explained by cross-examination. It therefore requires to be corroborated. Corroboration by circumstantial evidence was in the case accepted as sufficient.—Nafa and others 23, W. R., 24.

There was not a particle of evidence against a prisoner, except the confession of a co-prisoner, which by S. 30 of the Evidence Act "may be taken into consideration." S. 30 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence and bad in law. The conviction was accordingly quashed.—Mad. H. Ct. Pro., Jan. 24, 1873; 7 Mad., xv, App.; 8 Mad. Jur., 415, *ib.*, 95. Ambigara Hulagu, I. L. R., 1 Mad., 694: Bhawan, I. L. R., 1 All., 664: Ramchand, *Ibid.* 675.

If the testimony of an accomplice given before a Court under a process of careful examination and capable of being tested by cross-examination is yet by its nature such that it is against the accused, it must be received with caution, still more so must be the confession of a fellow prisoner, which is only the bare statement of an accomplice limited to just so much as the confessing person chooses to say, and guaranteed by nothing except the peril into which it brings the speaker and which it is generally fashioned to lessen.—Sadhu Mundul, 2 I. L. R., 69, Mohesh Biswas, 19 W. R.: Belat Ali Moonshee, 19 W. R., 67: Budhu Nanku, I. L. R., 1 Bomb., 475.

A prisoner can be convicted on the confession of a fellow prisoner if it be admissible under S. 30, provided that it is corroborated by other evidence, but how far such corroborative evidence would be sufficient must depend on the circumstances of each case (per Garth, C. J.) but (per Jackson and McDonell, JJ.) no conviction at such confession corroborated by circumstantial evidence can be supported unless the circumstances constituting corroboration would if believed to exist, themselves support a conviction.—Ashootosh Chuckerbutty, I. L. R., 4 Cal. 484, FULL BENCH.

Where a Sessions Judge in examining the prisoners on the trial, required them to withdraw from the Court until the turn of each to be examined came round, and by this means most of them never had an opportunity of knowing or denying what the others had said, and the Sessions Judge convicted mainly on the statements so obtained, the High Court on appeal, in considering the evidence, placed their statements aside remarking that it is an elementary rule that no one should be condemned in his absence and on evidence taken behind his back.—Chunder Nath Sikdar and others, 8 Cal. L. R., 352; (S. C.) I. L. R., 7 Cal. 65. Approved and followed I. L. R., 6 Bomb., 124.

Admissions not conclusive proof, but may estop.

XXXI. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

XXXII. Statements, written or verbal, relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

When it relates to cause of death;

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Thus in the case of Bissorunjan Mookerjee, 6 W. R., 75, in which the prisoner was charged with murder and rape, the dying declaration of the woman was received as evidence on the charge of rape. The terms of the law, it will be observed, do not require as heretofore any belief on the part of the deponent that he is in danger of approaching death.

The mere signature of a Magistrate, without proof or solemn affirmation, that a person since deceased actually made a declaration reduced to writing, is not sufficient authentication. It is obviously desirable that the person who took the statement should be subject to examination as to the dying man's state of mind when he made it as well as to other circumstances. The declaration made in the absence of the prisoner, and not authenticated by oral evidence, was rejected.—Fata Adaji, 11 Bomb., 247.

or is made in course of business;

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter, had arisen.

or relates to existence of relationship;

(5.) When the statement relates to the existence of any relationship between persons as to whose relationship (*by blood, marriage, or adoption* Act XVIII, 1872, S. 2) the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6.) When the statement relates to the existence of any relationship (*by blood, marriage, or adoption* Act XVIII, 1872, S. 2) between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(7.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section thirteen, clause (*a*).

or is made by several persons, and expresses feelings relevant to matter in question.

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Cl. 8 refers to a case in which a number of persons collect together to give vent to one common statement, which statement expresses the feelings or impressions made in their minds at the time of making it. It does not mean that a Police officer may go round, collect a great many statements from persons in different places, and afterwards put those statements in second-hand before a Court as evidence which may affect the result of a criminal trial.—Ram Dutt Chowdry, 23 W. R., 35.

To these instances, S. 512 of the Code, was added the following:

If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Illustrations.

(*a*.) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b*.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(*h*.) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i.*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k.*) The question is, whether A, who is dead, was the father of B.

A statement made by A that B was his son, is a relevant fact.

(*l.*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m.*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

XXXIII. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

See S. 512 of the Code of Criminal Procedure quoted in the note to the last section. See also Ss. 503, 504 of the Code respecting the issue of commissions for the examination of witnesses in Criminal cases.

S. 33 of the Evidence Acts gives the Courts new powers which require to be exercised with great caution. There is no doubt that it is still necessary (just as much as ever it was) to produce every witness at the trial unless it is proved to be actually impossible, or to be so difficult to do so that it is, under the circumstances, unreasonable to insist on his production. In the present case everything turns on the evidence of an absent witness, and without it the prosecution must fail. The Judge gives no means of judging whether there was any really good reason why the witness was not produced by the prosecution. He simply says "all attempts to find him having failed . . . . We are of opinion that when the evidence of an absent witness is admitted under S. 33 of the Evidence Act, the grounds for its admission should be stated fully and clearly so as to enable the Courts to judge of the propriety of its admission. In the present case we think that it was improperly admitted: because there is nothing to show that, by ordinary care, and by the use of the ordinary means, the witnesses could not have been produced . . . . We think that, in order to make a deposition admissible under S. 33, there must be evidence that the accused person did in fact have an opportunity of cross-examining him."—*Per* Macpherson, J., Morris, J., concurring; Mowjan *alias* Nance Khan, 20 W. R., 69.

The following judgment of the Calcutta High Court (*per* Phear, J., Morris, J., concurring) discloses another instance of the improper admission of evidence under S. 33 of the Evidence Act:—

"On the record of the Sessions Court, as it has come up to us, we do not find the evidence of witnesses, excepting in the shape of depositions which purport to have been made before the Assistant Commissioner. And we have the following remark of the Judge: 'The officer of the Court reports that neither of the witnesses for the prosecution are present. The accused in his examination admits the facts which have been spoken to by the witnesses in the preliminary inquiry. As, therefore, useless delay and expense would be incurred by postponing this case, and causing the absent witnesses to appear, it is hereby ordered that the depositons taken by the Assistant Commissioner be, under S. 33, Act I of 1872, admitted as evidence in the present case.'

"The Judge does not go so far as to say that he thinks that the presence of the witnesses could not be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. He confines himself to saying: 'As, therefore, useless delay and expense would be incurred by postponing this case, and causing the absent witnesses to appear, it is hereby ordered.' Now, it might very well be that, in the view which the Judge had taken of the case, 'the delay and expense' of postponing the trial in order that the absent witnesses might be able to appear was a 'useless delay and expense.' But it does not follow that the delay and expense of bringing the witnesses was, under all the circumstances of the case, unreasonable. The delay could hardly, in a matter of this kind, where the charge against prisoner was that of having committed murder—the delay of an adjournment to the next Sessions—could not in itself very well be considered unreasonable for the purpose of enabling the case to be duly tried on *vivâ voce* testimony. And the expense of bringing the witnesses of the prosecution, and any other expense that might be attendant upon this delay, could hardly of itself, under the circumstances disclosed to us, be considered unreasonable, unless it is so in almost every case which is tried. The prisoner certainly had a right to expect that the witnesses should be brought to give their testimony *vivâ voce* before the Sessions Court, and any expense or delay that might be necessary for that purpose must, in the absence of special facts, be taken as reasonable rather than unreasonable. This is not a case in which any special difficulty seems to have occurred in the way of procuring the witnesses, for nothing of a special nature is hinted at by the Judge which should stand in the way of postponement of the trial And this being so, we think that the condition was not satisfied under which, in pursuance of the provisions of S. 33, the Judge had discretion to take the depositions of witnesses instead of and in the place of the oral testimony of the witnesses themselves. The result is, in our opinion, that there was no evidence rightly before the Court at the Sessions trial, except the statement which the prisoner himself made to the Court."—Lakhan Santal, March 26. 1874.

It should be recollected, as pointed out in the case of Soojan Beebee (21 W. R, 414; (S. C.) 44 B. L. R., 3 *App.*), that S. 33 does not apply to statements previously made by parties to a suit who are not afterwards witnesses. Such statements can be used adversely to such persons as admissions unless they can show that the facts on the former answer were different from what they stated them to be, and that the deposition was false, and it would require strong evidence to prove that what the parties had deliberately asserted was altogether untrue, they alleging the facts to be different in order to keep the property which they were in possession of.

Where evidence had been legally taken by the British consul at Zanzibar who could not, however, enforce the attendance of the witnesses at the trial in Bombay, the depositions of the absent witnesses were received as evidence.—Empress *v.* Dosaji Gholam Hosein, I. L R., 3 Bomb., 331.

But where the former statement had been made *coram non judice* it is not admissible.—Rama Reddi, I. L. R., 3 Mad, 48.

When a witness had been examined in the inquiry before the Magistrate and after the commitment of the accused on a charge of grievous hurt, the injured person died and additional charges of murder and culpable homicide were added, the evidence of the injured man who had died and of another witness who had absconded were rightly received in the Sessions Court. The test is whether the same evidence is applicable though different consequences might follow from the same act.—Rochia Mahato, I. L. R., 7 Cal., 42.

The incapacity to attend need not be a permanent incapacity, but may be something short of it. The fact that a witness was ill and confined to his house is not sufficient. Precise evidence as to the nature of the illness and the incapacity of the witness to attend should be forthcoming. *In re* Asgur Hosein and others, 8 Cal. L. R., 124, (S. C.) I. L. R., 6 Cal., 774.

But see *contra* Piyaree Lall and others, 4 Cal. L. R., 504.

The incapacity to attend denotes an incapacity of a permanent not a temporary kind: and when a person is proved to be incapable of attending, the Court has no discretion in receiving his deposition. But when the absence of a witness is casual or due to a temporary cause, the Court has such a discretion "if his presence cannot be obtained without an amount of delay "or expense which under the circumstances the Court considers unreasonable." In this case it

was stated by the medical officer that the witness was suffering from small-pox and consequently was not in a position to attend Court and give evidence, but would probably be able to attend in a week or so. The High Court on appeal rejected the deposition of the absent witness taken at the inquiry as inadmissible.—Piyaree Lall and others, 4 Cal. L. R., 504.

A dying declaration made to a Magistrate but not in the presence of the accused person is not legal evidence unless the Magistrate be examined and use that statement to refresh his memory.—Samiruddin, 10 Cal. L. R., 11.

It is only in extreme cases of delay or expense that the powers given by S. 33 should be exercised.—Mulla, 1 Leg. Rem., 220.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

XXXIV. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000 and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Account-books, regularly kept in the course of business, are admissible in evidence, although the entries in them may not have been made by, or at the direction of, a person who had personal knowledge of the truth of the facts stated.—Harmanta Madhaji Khadkoo. Bomb. H. Ct. Feb. 26, 1877.

Relevancy of entry in public record, made in performance of duty.

XXXV. An entry in any public or other official book, register, or record stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty especially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

XXXVI. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.

XXXVII. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

Relevancy of statements as to any law contained in law-books.

XXXVIII. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

XXXIX. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice, when relevant.

Previous judgments relevant to bar a second suit or trial.

XL. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Relevancy of certain judgments in probate, &c., jurisdiction.

XLI. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment (*order or decree**) declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment (*order or decree**) declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment (*order or decree**) declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41.

XLII. Judgments, orders or decrees other than those mentioned in section forty one, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees, are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, &c., other than those mentioned in sections 40—42, when relevant.

XLIII. Judgments, orders or decrees, other than those mentioned in sections forty, forty-one, and forty-two, are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

* *Added by Act XVIII*, 1872, *S.* 3.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*.) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d*.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

It has been held under the terms of S. 43 that though decrees to which one of the parties was no party were no evidence under Ss. 40, 41, 42, still they were admissible under S. 13 as a transaction not as conclusive but to receive such weight as the Court might think that they ought to receive. In S. 13 there is not the limit that the suit must be between the same parties. Of course, the value of the decree will be very different when it is given in a suit to which the person against whom it is used was not a party and had not an opportunity of contesting the matter, and where he was a party to the suit and had the opportunity of producing any evidence he might think fit. Unless the Indian Evidence Act has excluded judgments and decrees which had previously been always considered as very good evidence, and which are indeed in many cases almost, if not quite, conclusive, it is clear that the decisions referred to were admissible in this case, and that the Subordinate Judge was wrong in treating them as not being evidence of the plaintiff's title. They ought to have been considered.—*Per* Couch, C J., and Ainslie, J.; Neamut Ali, 22 W. R., 365.

Fraud or collusion in obtaining judgment or incompetency of Court, may be proved.

XLIV. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section forty, forty-one, or forty-two, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinion of experts.

XLV. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, (*or in question as to identity of handwriting*—Act XVIII, 1872, S. 4) are relevant facts.

Such persons are called experts.

Illustrations.

(*a*.) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(*b*.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts.

XLVI. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a.*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) The question is, whether an obstruction to a harbour is caused by a certain sea wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

XLVII. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom C habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

XLVIII. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

XLIX.—When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship when relevant.

L. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, as a relevant fact: Provided that such opinion

shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven, or four hundred and ninety-eight of the Indian Penal Code.

Illustrations.

(*a.*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant

Grounds of opinion when relevant.

LI. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases character to prove conduct imputed, irrelevant.

LII. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

LIII. In criminal proceedings, the fact that the person accused is of a good character is relevant.

In criminal proceedings, previous conviction relevant, but not previous bad character, except in reply.

LIV. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Where the complainant claimed certain property found with the prisoner as his own and as having been stolen from him and the prisoner stated that it belonged to him, the Sessions Judge was held to have misdirected the Jury in stating "the fact that the prisoner has been twice imprisoned is not without its weight and should be taken into consideration by you when deciding on the reliability of the evidence of identification." That was treating the previous conviction as evidence of character which was irrelevant and inadmissible.—Rocha Dosadh and others, 6 Cal L. R, 219; (S. C) I L R., 5 Cal., 768.

See S 511 of the Code regarding the manner of proving a previous conviction.

The Explanation to S. 54 evidently refers to proceedings under Chapter VIII, Ss 109 *et seq.* of the Code, under the European Vagrancy Act 1874 or under the Habitual Criminal.

Character as affecting damages.

LV. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation.—In sections fifty-two, fifty-three, fifty-four, and fifty-five, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

LVI. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

LVII. The Court shall take judicial notice of the following facts :—

(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

Explanation.—The word 'Parliament' in clauses (two) and (four) includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;
2. The Parliament of Great Britain;
3. The Parliament of England;
4. The Parliament of Scotland; and
5. The Parliament of Ireland:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government:

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown:

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10) The territories under the dominion of the British Crown:

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it:

(13.) The rule of the road *(on land or at sea*, Act XVIII, 1872, S. 5.)

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

LVIII. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

LIX. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

LX. Oral evidence must, in all cases whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

For the meaning of the term "expert," see S. 45.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

LXI. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

LXII. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

LXIII. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3.) Copies made from or compared with the original;

(4.) Counterparts of documents as against the parties who did not execute them;

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a.*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b.*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original

(*c.*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d.*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Copies inadmissible under the Evidence Act having been rejected, it was competent to the Court, as a matter of discretion, to refuse to accept the originals when tendered in a later stage of the suit.—*Per* L. S. Jackson and McDonell, JJ., Hurcchur Mozoomdar, 22 W. R., 355.

Proof of documents by primary evidence.

LXIV. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

LXV. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of Court, or of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(*b.*) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c.*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d.*) When the original is of such a nature as not to be easily moveable;

(*e.*) When the original is a public document within the meaning of section seventy-four;

(*f.*) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g.*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*), or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the document by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

LXVI. Secondary evidence of the contents of the document referred to in section sixty-five, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is (*or to his attorney or pleader* Act XVIII, 1872, S 6) such notice to produce it as is prescribed by law, and if no notice is prescribed by law then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

LXVII. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

The law does not render it necesary that direct evidence of the handwriting of the person, who is alleged to have executed a deed, must be given by some person who saw the signature affixed. It is left to the discretion of the Judge to determine what satisfies him that the document is genuine.—*Per* Markby and Birch, JJ., Neelkanto Pandit, 13 B L. R., 18, *App.*

Proof of execution of document required by law to be attested.

LXVIII. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof where no attesting witness found.

LXIX. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

LXX. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

LXXI. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

LXXII. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

LXXIII. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

LXXIV. The following documents are public documents:—

(1.) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India or of any other part of Her Majesty's dominions, or of a foreign country.

(2.) Public records kept in British India of private documents.

Private documents.

LXXV. All other documents are private.

Certified copies of public documents.

LXXVI. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

LXXVII. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

LXXVIII. The following public documents may be proved as follows:—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3.) Proclamations, orders or Regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4.) The acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India,

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

LXXIX. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

LXXX. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Ss. 353 *et seq.* of the Code of Criminal Procedure provide for the taking of evidence in criminal cases. Ss. 164, 364 of the same Code provide for the recording of statements or confessions made to a Magistrate.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

LXXXI. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

See explanation to S. 90, *post*.

Presumption as to document admissible in England without proof of seal or signature.

LXXXII. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government

LXXXIII. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

LXXXIV. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

LXXXV. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

LXXXVI. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

LXXXVII. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

LXXXVIII. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

LXXXIX. The Court shall presume that every document called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

XC. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

The explanation applies also to section eighty-one.

Illustrations.

(*a.*) A has been in possession of landed property for a long time He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b.*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c.*) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

XCI. When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills *under the Indian Succession Act* may be proved by the probate.

[For the words in italics, Act XVIII, 1872, s. 7, has substituted "admitted to probate in British India."]

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b.*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c.*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible

Any omission in the records of a confession or other statement of an accused person made by a Magistrate may be supplied by evidence notwithstanding S. 91 of the Evidence Act, provided that the error has not injured the accused as to his defence on the merits. S. 533, Code of Criminal Procedure.

Exclusion of evidence of oral agreement.

XCII. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a.*) A policy of insurance is effected on goods "in ships from Calcutta to London" The goods are shipped in a particular ship, which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c.*) An estate called 'the Rampur tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter, in which nothing is said as to the time of payment, and accepts the goods on delivery B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*.) A sells B a horse and verbally warrants him sound. A gives B a paper in these words :—'Bought of A horse for Rs. 500.' B may prove the verbal warranty.

(*h*.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month' A may prove a verbal agreement that these terms were to include partial board

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i*.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(*j*.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

XCIII. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.'
Evidence cannot be given to show which price was to be given.

(*b*.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

XCIV. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bighás.' A has an estate at Rámpur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

XCV. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, 'my house in Calcutta'.
A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.
These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

XCVI. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a*.) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

XCVII. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, &c.

XCVIII. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my models.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

XCIX. Persons who are not parties to a document, or their representatives in the interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

C. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

Chapter VII.—Of the Burden of Proof.

Burden of proof.

CI. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

CII. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

CIII. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(*a.*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

CIV. The burden of proving any fact necessary to be proved, in order to enable any person to give evidence of any other fact, is on the person who wishes to give such evidence.

Illustrations.

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b.*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

CV. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the cases provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

The fact that the charge is made, is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. Code of Criminal Procedure, S. 221. cl. V.

Where a person charged with rioting sets up the exercise of the right of private defence, it is for him to contradict that plea either from the evidence for the prosecution or by evidence adduced on his own behalf It is not for the prosecution to show that the acts charged were not done in the exercise of the right of private defence.—Omed Ali and others, Cal. H. Ct. June 1, 1877.

See also Tookhun Mahato, July 24, 1877.

The plea must be supported by evidence giving a full and true account of the affair from which the charge arises. No accused person can at the same time deny committing an act and justify it. The law does not admit of justification by putting forward hypothetical cases; it must be by proof of actual facts.—Jowsheir Sirdar, 1 Cal. L. R, 62. But if the evidence for the prosecution shows that no offence was committed because the accused acted in exercise of his legal rights of private defence, he should not be called upon to make his defence at the trial at all.

Burden of proving fact especially within knowledge.

CVI. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a.*) When a person does an act with some intention other than that, which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b.*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

CVII. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

CVIII. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on (*shifted to*—Act XVIII, 1872, S. 9) the person who affirms it.

Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent.

CIX. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it

Burden of proof as to ownership.

CX. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

CXI. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a.*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b.*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

CXII. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

CXIII. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

CXIV. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a.*) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession:

(*b.*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c.*) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d.*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence:

(*e.*) That judicial and official acts have been regularly performed:

(*f.*) That the common course of business has been followed in particular cases:

(*g.*) That evidence which could be, and is not, produced would, if produced, be unfavourable to the person who withholds it:

(*h.*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him:

(*i.*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

As to illustration (*b*)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

With regard to (*a*) an important consideration in determining whether the particular person is the thief or the receiver is not only the nature of the article, whether it is one capable of being readily transferred in the course of business—see proviso to (*a*)—but whether the possession was recent, that is, at no great interval of time after the commission of the theft.

With regard to (*b*), S. 133 declares that an accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, Our Courts have, however, invariably discouraged such a practice, and in appeal the High Courts have frequently set aside convictions which proceeded entirely on such uncorroborated evidence. See Budhu Nanku, I. L. R., 1 Bomb., 475; Jaffir Ali, 19 W. R., 57; Naga, 23 W. R., 24; Sadhu Mundul, 21 W. R., 69.

So in the case of Nazam, 2 Leg. Rem., 170 it was held that although it is true that a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice, yet the unfailing practice of all Courts of Criminal Justice in England, as also in India, has been and always should be to require some corroboration in a material particular from a source independent of the accomplice, more particularly as to the identity of the party accused by him. It cannot for a moment be questioned that this is a sound and wholesome rule, and were any other method followed perfectly innocent persons would be placed at the mercy of an approver, who, having received a conditional pardon, would realize that his only sure means of escape would be to implicate other persons in his crime.

The same rule was laid down by the Madras High Court in the case of Ramasami Padayachi, I. L. R., 1 Mad., 394. The Jury, in cases tried by Jury, and the Court, in cases tried with Assessors, may no doubt presume that an accomplice is unworthy of credit unless corroborated, but before acting on the presumption, the Jury or Court is required by S. 114 and the sequel in the Illustration to take into consideration certain facts with the view to ascertain the probability of the story told, and the rule in the section is thus brought to coincide with the rule observed in England, that though the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the Jury in the one case, or the Court in the other, credits that evidence, a conviction proceeding upon it is not illegal.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

CXV. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant;

And of license of person in possession.

CXVI. No tenant of immoveable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof,

shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

CXVII. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

Who may testify.

CXVIII. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

A Juror or Assessor, in a Sessions trial, personally acquainted with any relevant fact is bound to inform the Judge that such is the case whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness. S. 294. Code of Criminal Procedure.

In the same manner a Judge can be examined in a trial before himself. See Mookta Singh, 13 W. R., 60, quoted in the note to S. 294 of the Code, p. 301 *ante*. But a Magistrate who is the sole judge of law and of fact is not competent to examine himself as a witness (*Per* Markby, J.); where he has done so and convicted the accused, the conviction is bad—(*Per* Prinsep, J.) The conviction can be sustained under S. 167, Evidence Act, if after rejecting that evidence, there is other evidence, which, if believed, is sufficient to support the conviction. In the matter of Mary Donnelly, I. L. R., 2 Cal. 405.

See also Hurro Chunder Pal, 20 W. R., 76, quoted in the note to S. 159, of the Code, p. 160 *ante*.

A Magistrate is not competent to examine an accused person as a witness except when a pardon has been lawfully tendered to, and accepted by him under Ss. 337, 338 of the Code. Harmanta Madhoji Khadkoe, Bomb. H. Ct., Feb. 26, 1877.

Dumb witnesses.

CXIX. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs: but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands.

Husband or wife of person under criminal trial.

CXX. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

CXXI. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a.*) A on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

It is the privilege of the witness of whom the question is asked, If he waives it, it does not lie in the mouth of any other person to assist it. Cheddu and others. *Per* Stuart C. J., Pearson, Oldfield, Straight, JJ., (Spankie, J.) *Dis.* 2 Leg. Rem., 34, (S. C.) I. L. R., 3 All., 573.

Communications during marriage.

CXXII. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other

Evidence as to affairs of State.

CXXIII. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

CXXIV. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by disclosure.

Information as to commission of offences.

CXXV. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

CXXVI. No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any criminal (*illegal* substituted for the word "criminal," Act XVIII, 1872, S. 10,) purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister (*pleader*, Act XVIII, 1872, S. 10,) attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a.*) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, &c.

CXXVII. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Privilege not waived by volunteering evidence.

CXXVIII. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister (*pleader*, Act XVIII, 1872, S. 10), attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

CXXIX. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness not a party.

CXXX. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person having possession, could refuse to produce.

CXXXI. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

CXXXII. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Ss. 161, 175 of the Code of Criminal Procedure declare that all persons who are supposed to be acquainted with the facts and circumstances of a criminal case or the cause of the sudden or unnatural death of any person, shall be bound to answer truly all questions put to them by the investigating Police officer (other than questions which may criminate them).

If a witness does not desire to have his answer used against him in a subsequent criminal charge, he must object to answer, although he may know beforehand, that such objection, if the

answer is relevant, is perfectly futile, so far as his duty to answer is concerned and must be overruled. Gopal Das, I. L. R., Mad., 271, *Per* Turner, C. J., Turner, Kindersle , JJ., Kernan, Multassim Ayyar, JJ., *diss.* The dissenting Judges held that S. 182 abolishes the privilege and confers an obligation on a witness to answer every question material to the issue, whether the answer criminate him or not, and gives him a right as correlated to that duty, to claim that that answer shall not be admitted as evidence against him in any criminal prosecution.

See the case of Seaman *v.* Netherclift, 2 C. P. D., 53 for the rule as to how far a witness is protected from proceedings in consequence of what he said while under examination. He is protected as to what he said having reference to the inquiry being held and may volunteer statements to explain imputations on his character and credibility arising from an imperfect answer to a question asked. "Malice is no element in such a case unless it be shown that the statement was made not in the course of giving evidence and therefore not in the character of witness." *Per* Cockburn, C. J.

CXXXIII. An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

Where a witness admits that he was cognizant of the crime to which he testifies, and that he took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice.—Chanda Chandalinee, 24 W. R., 55.

The evidence of an accomplice in Criminal cases would be generally that of a person supposed to be directly or indirectly concerned in, or privy to an offence triable exclusively by the Court of Session or High Court then under inquiry, or committed for trial in which he had accepted a pardon tendered by certain Magistrates or by the Sessions or High Court, Ss. 337, 338, Code of Criminal Procedure. The confession of a person under trial for the same offence jointly with others can be taken into consideration against his fellow prisoner if it affects himself and those persons—S. 30 *ante;* but as pointed out by Phear, J., such confession would not stand as high as even the evidence of an accomplice.—Nafar and others, 23 W. R., 24.

With respect to the evidence of an accomplice the Court, having regard to the common course of natural events, or human conduct, may presume that it is unworthy of credit unless corroborated in material particulars, but where a crime is committed by several persons, and three of them are captured on the spot and are kept apart from each other, if each gives an account of the crime implicating a fourth person, and these accounts corroborate each other in such a manner as to render previous concert highly improbable, the Court may take this into consideration in considering the value of that evidence. S. 114 *ante* Illustration (b).

The following cases contain the substance of the leading cases on this subject. (See also notes to S. 114 *ante* and S. 337 of the Code.)

The evidence should not be left to a Jury without such directions and observations from the Judge as the circumstances of the case may require.

If a Judge in a criminal trial were to tell the Jury that in his opinion the evidence was sufficient to justify them in finding the prisoner guilty, in a case in which, if the Judge had been trying the case with Assessors the High Court would on appeal have reversed his judgment if upon the same evidence he had convicted the prisoner, then no doubt the Court ought on appeal, to set aside a verdict of guilty found by the Jury notwithstanding the advice was merely as to the weight of evidence.

So, if a Judge, instead of advising a Jury not to convict upon the mere uncorroborated evidence of an accomplice, were to advise them to convict upon such evidence, or were to tell them that the uncorroborated evidence of an accomplice given under a tender of pardon was admissible, and that it was for them alone to form their opinion upon it, that a conviction founded upon such evidence would be legal, and that such evidence without corroboration might be acted upon with as much safety as that of any other witness, I think the error in the direction would form a good ground of appeal.—Elahee Bukhsh, 5 W. R , 80: (S. C) B. L. R., Sup. Vol. (F. B.) 459. *Per* Peacock, C. J. (Kemp and Phear, JJ. concurring).

The law and practice of our Courts were thus summed up by Phear, J. (Morris, J. concurring) in the case of Sadhu Mundal, 21 W. R., 69:—"The result seems to be that the Legislature has laid it down as a measure or rule of evidence resting on human experience that an accomplice is unworthy of credit against an accused person, *i. e*, so far as his testimony implicates an accused person, unless he is corroborated in material particulars in respect to that person: that it is the duty of the Court which in any particular case has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not; in other words, to consider whether the requisite corroboration is furnished by other evidence or facts

proved in the case, though, at the same time, the Court may rightly in exceptional cases, notwithstanding the maxim, and in the absence of this corroboration, give credit to the accomplice's testimony against the accused, if it sees good reason for doing so upon ground other than, so to speak, the personal corroboration.

"Now in a case tried by Jury, it is the function of the Jury to ascertain the facts upon the evidence before them, and for that purpose to be guided by the law which is applicable, and it is in all cases the duty of the Judge to point out to them that law. It was therefore the duty of the Judge to lay before the Jury substantially, to the effect just set out, the principles relative to the reception of an accomplice's testimony which the Legislature has sanctioned by the Indian Evidence Act: and the Judge was wrong in telling the Jury that this case was one in which no caution or instruction from him was needed on this head. It is, in all cases in which an accomplice's testimony is admitted, incumbent on the Judge to inform the Jury of the results of the law bearing on this point substantially as we have just endeavoured to explain it."

It is not sufficient simply to tell a Jury to consider whether the evidence of an accomplice was strongly corroborated as to the prisoners, as that would be to ask them to consider a question which, it is certain, no native Jury in the mofussil would understand It is the duty of the Judge to go through the history of the crime as related by the accomplice, to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at or cognisant of, the murder. If such facts are proved, they would corroborate the story of the accomplice. But it would not be enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story. If the state of facts proved *is equally consistent with*, and capable of receiving, a reasonable and natural explanation on the hypothesis of the prisoner's innocence, *those facts, standing alone, would be no evidence of the truth* of the accomplice's story.—Karoo and others, 6 W. R., 44; see also Bykunto Nath Banerjea, 10 W. R., 17.

The Bombay High Court, however, on the authority of the case of Reg. *v.* Stubbs (2 Law J. Mag, Ca, 16) has held that the omission on the part of a Sessions Judge to tell the Jury that they should require corroboration before convicting a prisoner on the evidence of an accomplice, is not an error in law, as it is competent to convict on the uncorroborated evidence of an accomplice, though it is contrary to all practice.—Ganu bin Dharoji, 6 Bomb., 57, *Crown cases.* See also Imam Valad Bakan, 3 *ibid*, 57; Budhu Nanku, I. L. R., 1 Bomb., 475.

As regards the amount of corroboration required to support the evidence of approvers, Norman, J. remarked:—"It is sufficient if the evidence is confirmatory of *some of the leading circumstances* of the story of the approvers as against the particular prisoner, so that the Court may be able to presume that they have told the truth as to the rest. The true rule on the subject of the corroboration of the evidence of approvers probably is, that if the Court is satisfied that the witness is speaking the truth in some material part of his testimony, in which it is seen that he is confirmed by unimpeachable evidence, there may be just ground for believing that he also speaks truth in other parts as to which there may be no confirmation."—Kalachand Dass, 11 W. R., 21.

There should be corroboration such as adds to the approver's evidence against the particular prisoner, and this is not complied with when there is no evidence apart from that of the accomplice which identifies the prisoner with the commission of the offence with which he is charged; nothing which distinctly goes to prove that he was in any way connected with the commission of the principal offences. Facts which do not show the connection of the prisoner with the commission of the offence with which he is charged are no corroboration in the sense in which the word is used in such cases, although they may tend to show that certain portions of what the accomplice says are true.—Nowab Jan. 8 W. R., 19 (see p. 25) per Macpherson, J.

So in the case of Baikoontonath Banerjea, 2 B. L. R, 3, (F. B.) *Footnote.* It was laid down that before the evidence of an accomplice can be safely depended upon, so far as it affects the prisoner, it ought to be corroborated—that is, that other evidence from sources independent of the approver, should be forthcoming relative to facts which implicate the prisoner in the same way as the story of the approver does. See also Mohesh Biswas, 19 W. R., 16.

S. 30 of the Evidence Act enables a Court to take into consideration a confession made by an accused person affecting himself and another person as well as against himself. See note to S. 30 *ante.* Such a confession is, however, no proper legal corroboration of the evidence of an accomplice.—Malapa bin Kapana and others, 81 Bomb., 196; Jaffer Ali, 19 W. R., 57, &c., &c.

Number of witnesses.

CXXXIV. No particular number of witnesses shall in any case be required for the proof of any fact.

The evidence of a complainant even if uncorroborated is sufficient for the conviction of the accused person.—*In re* Kulum Mundul, 22 W. R., 32.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

CXXXV. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

CXXXVI. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b.*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c.*) A is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

Cross-examination.

Re-examination.

CXXXVII. The examination of a witness by the party who calls him shall be called his examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations. Direction of re-examination.

CXXXVIII. Witnesses shall be be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

The Court cannot refuse to allow a witness to be cross-examined who has been called by itself.—Grish Chunder Talookdar, 5 Cal. L. R., 364.

Cross-examination of person called to produce a document.

CXXXIX. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

CXL. Witnesses to character may be cross-examined and re-examined.

Leading questions.

CXLI. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

CXLII. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

CXLIII. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

CXLIV. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence was not contained in a document; and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who calls the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

CXLV. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

CXLVI. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

(1) to test his veracity;

(2) to discover who he is and what is his position in life; or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

No inference is to be drawn from not putting questions in cross-examination.—Madho Rao Cainta Pant Galai, Feb. 7, 1837, *per* Parke, B.; 5 W. R., 33, Privy Council Cases.

When witness to be compelled to answer.

CXLVII. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

CXLVIII. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court may, if it sees fit, draw from the witness's refusal to answer the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

CXLIX. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a.*) A barrister is instructed by an attorney or vakíl that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(*b.*) A pleader is informed by a person in Court that an important witness is a dákáit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.

(*c.*) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.

(*d.*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

Procedure of Court in case of question being asked without reasonable grounds.

CL. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakíl or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakíl or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

CLI. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

CLII. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

CLIII. When a witness has been asked and has answered any question which is relevent to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answers to questions testing veracity.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

As to the manner in which a previous conviction may be proved, see Code of Criminal Procedure, S. 326.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying facts suggested, he may be contradicted.

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he has not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

CLIV. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Question by party to his own witness.

CLV. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

Impeaching credit of witness.

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has *had* (*accepted*—substituted for "had" Act XVIII, 1872, S. 11) the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of a former statement inconsistent with any part of his evidence which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a.*) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

CLVI. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

CLVII. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

CLVIII. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

CLIX. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

A witness cannot be compelled to refresh his memory from any document unless it is in the possession of the party who desires to put it to the witness, or is, at least, such as he can insist on having produced. A Police Diary is a document which an accused is not entitled to call for (S. 172, Code of Criminal Procedure) and be entitled to require that it shall be referred to for the purpose of refreshing the memory of a Police officer.—*In re* Kali Churn Chumari, 10 Cal. L. R., 51; (S. C.) I. L. R., 8 Cal., 156.

Testimony to facts stated in document mentioned in section 159.

CLX. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

CLXI. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

CLXII. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence, of document called for and produced on notice.

CLXIII. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document production of which was refused on notice.

CLXIV. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

CLXV. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be

entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

The term "Judge" would not ordinarily include a Magistrate, and it is not specially defined by this Act or by the "General Clauses Act" (I, 1868). "Court," however, is defined by S. 3, *ante*, to "include all Magistrates," so that probably S. 165 would be held to apply to proceedings before a Magistrate.

On the examination-in-chief being finished, the Sessions Judge questioned almost all the witnesses at considerable length upon the very points to which he must have known that the cross-examination would certainly and properly be directed. The result of this was to render the cross-examination of the Pleader to a great extent ineffective by assisting the witnesses to explain away in anticipation the points which may have afforded proper ground for useful cross-examination. It is not the province of a Court to examine the witnesses unless the Pleaders on either side have omitted to put some material further question: the Court should as a rule leave the witnesses to be dealt with by the Pleaders as laid down in S. 138. Noor Bux, 7 Cal. L. R., 385: (S. C.) I. L. R., 6 Cal., 279.

Where the Sessions Judge thinks it necessary to call one of the witnesses for the prosecution examined before the Magistrate but not called on the part of the prosecution, for the purpose of eliciting some facts which he considered necessary for the prosecution, the prisoner ought to be allowed an opportunity of putting any questions he thinks proper in cross-examination.—Grish Chunder Talukdar, I. L. R., 5 Cal., 614.

When the Counsel for the prisoner has examined or declined to cross-examine a witness, and the Court afterwards of its own motion examined him, the witness cannot then, without the permission of the Court, be subjected to cross-examination. When after the examination of a witness by the complainant and the defendant the Court takes him in hand, he is put under special pressure, as the Judge is empowered to ask any question he pleases in any form about any fact relevant or irrelevant, S. 165; and he is therefore at the same time placed under the special protection of the Court, which may, at its discretion, allow a party to cross-examine him, but this cannot be asked for as a matter of right.

The principle applies equally whether it is intended to direct the examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends, or is so designed, to get rid of the effect of all his answers and of each of them just as much as one that may bring out an inconsistency or a contradiction. It is then a cross-examination upon answers, upon every answer given to the Court, and is therefore to the Court's control.—Sakharam Makundji, 1 Bomb., 166.

Power of jury or assessors to put questions.

CLXVI. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Chapter XI.—Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

CLXVII. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

This section applies to criminal as well as to civil cases, and even to a case tried by Jury in which evidence not legally admissible, a confession had been laid before the Jury. The Court then proceeded to consider the evidence in the case, and holding that it was sufficient to support the conviction, refused to interfere. *Per Garth, C. J.*, and *Pontifex, J.*, Horribole Chunder Ghose, 25 W. R. 36, (S. C.) I. L. R., 1 Cal., 207.

So also in the case of Pitambar Jana, I L. R., 2 Bomb, 61, the Bombay High Court held on the authority of the cases of Reg. v. Navroji, 9 Bomb., 358, and Reg. v. Hurribole Chunder Ghose, 25 W. R., 36; (S. C) I. L. R, 1 Cal., 207, that it had power to review the whole case and determine whether if a question found to have been improperly rejected had been admitted, the result would have been the same. The judgment is as follows:—

"Apart from those two cases, *i. e.*, if the question were now raised for the first time, we think that, by Clause 26 of the Letters Patent, 1865, and Section 101 of the High Court's Criminal Procedure Act (now re-enacted in S. 434 of the Code), the power of so reviewing the whole case, on a point of law such as the admissibility of rejected evidence when reserved, is expressly conferred on this Court. We are clearly of opinion that Section 167 of the Indian Evidence Act, 1872, is applicable to criminal as well as to civil cases, and is so to criminal cases, whether or not the trial has been had before a Jury, and that the expression in that section "the Court before which such objection is raised," includes the reviewing or Appellate Court. That the 167th section applies to criminal as well as to Civil Courts is, we think, satisfactorily established by the 1st section, which renders the Act applicable "to all judicial proceedings in or before any Court including Courts Martial" with certain exceptions not material in this case, and by section 3 which declares that the word 'Court' includes all Judges and Magistrates."

If, however, the evidence after excluding that improperly admitted is such that the Jury might not unreasonably find the accused or some of them guilty, but is not conclusive as to their guilt, the Court will order a new trial.—Reg. v. Amutee Govinda, 10 Bomb., 497.

So also in the case of Gogon Chunder Bose, I. L. R.. 6 Cal., 247, in which it was held that a judgment in a Court not declaring a certain document to be a forgery had been improperly admitted as evidence on the Criminal trial, the High Court proceeded to consider whether the other evidence was sufficient for the verdict of a Jury convicting the prisoner and having found that it was not sufficient acquitted him.

ACT XVIII OF 1872.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of His Excellency the Governor-General on the 29th August 1872.)

Preamble.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872; It is hereby enacted as follows:—

Short title.

I. This Act may be called "The Indian Evidence Act Amendment Act;"

Commencement.

And it shall come into force on the passing thereof.

Amendment of Act I of 1872, Section 32, clauses 5 and 6.

II. In section thirty-two of the Indian Evidence Act, 1872, clauses (5) and (6), after the word "relationship," the words "blood, marriage or adoption" shall be inserted.

Amendment of Section 41.

III. In section forty-one of the same Act, lines seventeen, twenty and twenty-three, after the word "judgment," the words "order or decree" shall be inserted.

Amendment of Section 45.

IV. In section forty-five of the same Act, line five, after the word "art," the words "or in questions as to identity of handwriting" shall be inserted.

Amendment of Section 57.

V. In section fifty-seven of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted.

Amendment of Section 66.

VI. In section sixty-six of the same Act, line five, after the word "is" the words "or to his attorney or pleader" shall be inserted.

Amendment of Section 91.

VII. In section ninety-one of the same Act, Exception (2), for the words "under the Indian Succession Act," the words "admitted to Probate in British India" shall be substituted.

Amendment of Section 92.

VIII. In section ninety-two of the Indian Evidence Act, 1872, proviso (1), for the words "want of failure," the words "want or failure" shall be substituted.

Amendment of Section 108.

IX. In section one hundred and eight of the same Act, line one, for the word "when," the words "Provided that when" shall be substituted; and in the last line, for the word "on," the words "shifted to" shall be substituted.

Amendment of Sections 126 and 128.

X. In section one hundred and twenty-six of the same Act, line twenty-two, and in section one hundred and twenty-eight of the same Act, line six, after the word "barrister," the word "pleader" shall be inserted.

In section one hundred and twenty-six of the same Act, line fifteen, for the word "criminal," the word "illegal" shall be substituted.

Amendment of Section 155.

XI. In section one hundred and fifty-five of the same Act, paragraph (2), for the word "had," the word "accepted" shall be substituted.

Saving of Act XV of 1852, Section 12.

XII. Nothing in the Indian Evidence Act, 1872, shall be deemed to affect Act No. XV of 1852 (*to amend the Law of Evidence*), section twelve.

ACT NO. XV OF 1869.

(*Received the assent of the Governor-General, June 4*, 1869.)

An Act to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.

Preamble.

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

I. This Act may be called "The Prisoners' Testimony Act, 1869."

Presidency Small Cause Courts.

Police Magistrates.

II. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

II.—Bringing up Prisoners.

Criminal Court may make orders under Act.

III. Any Criminal Court not inferior to the Court of a Subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the

local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in Schedule A or Schedule B (as the case may be) to this Act annexed, directed to the Officer in charge of the said jail.

A Subordinate Magistrate of the first class would, under the present Code of Criminal Procedure, correspond to a Magistrate of the second class.

For the definition of High Court, see Act I, 1868, S. 2, cl. xi.

Order to be transmitted through Magistrate of the District in which the person is confined.

IV. When any person for whose attendance an order as hereinbefore mentioned shall be made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the District or division of a District in which the said person is confined, and such Magistrate shall cause it to be delivered to the Officer in charge of the jail in which such person is confined.

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

VII. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required is held, the Judge or presiding Officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court; and such High Court may, if it thinks fit, make an order in the form in the said Schedule A, directed to the Officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the District or division of a District in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the Officer in charge of the jail in which such person is confined.

For the purposes of this Section and Sections three and four, the Chief Commissioner of British Burma shall be deemed to be a High Court; the Court of a Recorder appointed under Act No. XXI of 1863 shall be deemed to be subordinate to the said Chief Commissioner; and every jail situate in British Burma shall be deemed to be situate within the local limits of the said Chief Commissioner's appellate jurisdiction.

Act VII, 1872, S. 78, substitutes the following for the last para of the preceding Section:—For the purposes of this Act, every jail in British Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner; and the Recorder of Rangoon may issue orders under this Section or Section three or four, and may also issue commissions under Part III of this Act in any jail in British Burma.

Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid. S. 542, Code of Criminal Procedure.

Persons confined beyond limits of appellate jurisdiction of High Court.

VIII. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma, for the purpose of giving evidence in any criminal matter in the Court of a Recorder appointed under the said Act No. XXI of 1863, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

Prisoner to be brought up.

IX. Upon delivery of any order under this Act to the Officer in charge of the jail in which the person named therein is confined, such Officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding Officer of such Court shall authorize him to be taken back to the jail in which he was confined.

Power to Government to exempt certain prisoners from operation of Act.

X. The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette, direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in Sections twelve, thirteen, and fourteen, shall not apply to such person or class of persons.

When jailor may disobey orders.

XI. When any person named in any order made under Section three, Section four, or Section seven appears to be from sickness or other infirmity unfit to be removed, the Officer in charge of the jail in which he is confined shall apply to the Magistrate of the District or division of a District in which such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the Officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued a statement of his reason for not obeying the same:

Provided that the said Officer shall not so abstain when

the order has been made under Section three,

and the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed,

and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

The rules for British Burma are to be found in the *Gazette of India*, March 26, 1870, p. 202; for the Central Provinces, in the same Gazette, Sept. 11, 1869, p. 261; for the Punjab, in the same Gazette, Sept. 25, 1869, p. 300; for Coorg, in p 301; for the North-Western Provinces, in the same Gazette, Oct. 16, 1869. p. 386; for Oudh, in the same Gazette, Dec. 4, 1869, p. 490; for the Hyderabad Assigned Districts, in the same Gazette, Dec. 18, 1869, p. 530.

IV.—Service of Process on Prisoners.

Process how served on prisoners.

XV. When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the Officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

XVI. Every Officer in charge of a jail upon whom any such service as is mentioned in section fifteen shall be made, shall as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof.

Such certificate shall be sufficient *primâ facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said Officer shall cause the same to be so sent through the Post Office by registered letter.

Power to make rules.

XVIII. It shall be lawful for the local Government, and, in cases arising under Section eight, for the Governor-General of India in Council, to make rules consistent with this Act.

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of Officers in all other matters connected with the enforcement of this Act; and from time to time to alter and add to the rules so made.

For the definition of "Local Government," see Act I, 1868, S. 2, cl. x. For the rules published by Government under this section, see note to S. 10, *ante*

Rules made by the Lieutenant-Governor of Bengal, under S. 18 of Act XV of 1869, for regulating the escort of prisoners (State prisoners excepted) to and from any Court situated within the jurisdiction of the High Court in which their presence is required, and for fixing the amount to be allowed for the costs and charges for such escort when their presence is required in any civil matter, and for the guidance of Officers in all matters connected with the enforcement of these rules:—

1. On receipt of an order issued by a Court of competent authority under Section 3 or 4 of the Act, the Officer in charge of the jail shall make a requisition on the District Superintendent of Police for an escort, and the District Superintendent shall supply such escort in conformity with the ordinary rules of his department

2. The Officer in charge of such escort shall, in like manner, be guided by the rules of the Police Department in the performance of his duty, and in the treatment of the prisoners under his charge.

3. All prisoners shall be taken to the Court before which their appearance is required by the most expeditious route. Prisoners under sentence for criminal offences shall ordinarily travel on foot, but civil prisoners, who are desirous of obtaining, and are willing to pay for the indulgence, may be provided with suitable means of conveyance. When a railway is available, all prisoners shall be conveyed by rail under charge of the Police guard.

4. Before any prisoner is made over to the Officer in charge of the escort, the Officer in charge of the jail shall satisfy himself that the fetters of the prisoner or prisoners to be removed

are in order, and that each prisoner is supplied with suitable clothing, and he shall further make over to the Officer in charge of the guard copies of the orders of the Court under which the prisoners are removed, together with a sum of money for their maintenance and road expense. Diet-money shall be calculated at a rate not exceeding 4 annas per diem, according to the number of days which the escort will take in going to and returning from the Court.

5. The Officer in charge of the guard shall give to the Officer in charge of the jail a receipt for such prisoners as he may receive, with a statement of the clothing, &c., in each prisoner's possession, and a receipt for the amount of diet-money or road expenses which has been advanced on their account. Advances required on account of the escort will be made by the District Superintendent supplying it.

6. Should there be a jail or lock-up at the place where the Court before which the prisoners have to appear is held, the Officer in charge of the escort shall deliver the prisoners to the keeper of such jail or lock-up, and shall not be responsible for their custody while they are in such jail or lock-up, but shall only be responsible for their custody while escorting them thereto, and from such jail or lock-up to the place where the Court is held.

7. On the completion of the duty for which the escort was detailed, the District Superintendent supplying it shall, if the presence of the prisoner was required in any civil matter, submit a bill to the Court from which the requisition proceeded, for the cost of the guard, as fixed by the scale in Schedule A, and for the actual expenditure incurred by them on account of carriage by land or water, if the journey is not performed entirely on foot, plus 10 per cent. for contingencies. A separate bill should also be forwarded by the District Superintendent for the diet-money and road expenses of the prisoner or prisoners.

8. All sums received in payment of these bills shall at once be paid into the treasury of the district from which the escort started to the credit of Government, as a receipt either of the Police or Jail Department, according as the amount is paid on account of the escort or the prisoners.

9. For the guidance of the Courts in estimating beforehand, under Section 17, the amount to be deposited by any party requiring the testimony of a prisoner in any civil matter, it is notified that the charges for escort parties have been fixed as shown in Schedule A attached to these rules; and that the average distance performed by escort parties travelling by road is ten to fifteen miles per diem. The Court should estimate for the whole time occupied in going, waiting, and returning. Where the journey is performed by rail, the cost of third class fares both ways for the whole party, including the prisoner, should be added. The fares by boat or steamer must be estimated on such information as the Court may itself possess. In every case 4 annas per diem for each prisoner's diet-money, and 10 per cent. on the cost of the guard for contingencies should be added. Any balance deficient between the amount estimated by the Court, and the charge entered in the District Superintendent's bill, will be recovered by the Court under Section 17 of the Act.

10. The Lieutenant-Governor exempts from the operation of the Act all State prisoners confined by order of Government.

SCHEDULE A.

Number of Prisoners.	Number of Constables employed.	Cost of Guard per diem.
		Rs. As. P.
1 to 3	2 Constables	0 8 0
4 to 6	1 Head and 2 Constables	1 1 4
7 to 12	1 Ditto 4 ditto	1 9 4
13 to 18	1 Ditto 6 ditto	2 1 4
19 to 24	1 Ditto 8 ditto	2 9 4
	And so on in proportion.	

Bengal Govt. Cir. 6, dated 11th January, 1870.

The following rules have been issued by the Government of the PUNJAB when any prisoner is summoned by a Court under the provisions of Act XV, 1869:—The Superintendent of the jail from which the prisoner is moved shall fix the scale and description of diet to be allowed to such prisoner during his absence from jail, and the Officer in charge of the public escort shall see that the diet fixed by the Superintendent of the jail is as far as possible given in each case. The cost of dieting prisoners under this rule shall be included in the bill of costs which the District Superintendent of Police presents for payment to the Court issuing process under No. IX of the rules already in force.—*Punjab Gaz.*, 1874, Part I, p. 336.

Publication of rules.

XIX. All such rules, alterations, and additions shall be published in the official Gazette, and shall from the date of such publication be deemed to have the force of law.

Power to declare who shall be deemed 'Officer in charge of Jail.'

XX. The Local Government may also declare in each case what Officer shall, for the purposes of this Act, be deemed to be 'the Officer in charge of Jail.'

For the definition of "Local Government" see Act I, 1868, S. 2, cl. x.

SCHEDULE A.

COURT OF

TO THE OFFICER IN CHARGE OF THE (*state name of jail*).

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the , at , on the day of next, by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [or in a certain charge or prosecution now pending before , against , *or as the case may be*] , and after the said shall then and there have given his testimony before the said or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.
(Countersigned) C. D.

SCHEDULE B.

COURT OF

TO THE OFFICER IN CHARGE OF THE (*state name of jail*).

You are hereby required to have the body of , now a prisoner in , under safe and sure conduct before the , at , or the day of next, by of the clock in the forenoon of the same day, there to answer a charge now pending before and after such charge shall have been disposed, or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.
(Countersigned) C. D.

ACT No. III OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 30th January 1880.)

An Act to amend the law relating to Cantonments.

Preamble.

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Cantonments Act 1880."

Local extent.

This section, section two and section twenty-four apply to the whole of British India. The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration; and, from the date on which any such portion is so extended to any place such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion shall cease to have effect in such place.

Enactments inconsistent with this Act in Madras and Bombay cantonments.

Repeal of Act XXII of 1864.

2. Act No. XXII of 1864 (*to provide for the administration of Military Cantonments*) is hereby repealed; but all orders, declarations, rules and regulations made, powers conferred, and Courts established under that Act, shall be deemed to be respectively made, conferred and established under this Act.

References to Act XXII of 1864.

All references to the said Act No. XXII of 1864 in enactments passed subsequently thereto shall be read as if made to this Act.

CHAPTER II.—CRIMINAL JURISDICTION.

Cantonment Magistrate.

3. Every person invested by the Local Government, under the Code of Criminal Procedure, with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate, and shall be deemed a Magistrate in charge of a division of a district within the meaning, and for the purposes, of the said Code.

A Cantonment Magistrate's powers under this section would be those described in Sch. III, Parts 3, 4 of the Code of Criminal Procedure and he would have powers of punishment as set forth in S. 32 (*a*) of the Code. He may also be invested with the additional powers described in Sch. IV. His jurisdiction over European British subjects would depend on his being himself an European British subject and a Justice of the Peace. S. 443 of the Code.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

Assistant Cantonment Magistrate.

The powers of an Assistant Cantonment Magistrate under the section are set forth in Sch. III, Part 1 or Part 2 and in S. 32 (*b*) or (*c*) as he might be of the second or third class and he may in addition be vested with powers as described by Sch. IV of the Code of Criminal Procedure.

CHAPTER III.—CIVIL JURISDICTION.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established.

Small Cause jurisdiction of Cantonment Magistrate.

The Local Government shall declare and may from time to time alter the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court referred to in section five; provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

Small Cause jurisdiction of Assistant Cantonment Magistrate.

7. All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided.

Act XI of 1865 to apply to all Small Cause Courts in cantonments.

8. Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III of 1859 (*for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates*) shall cease and so much of any Act as authorises the commanding-officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions, shall cease to have effect within the limits of such cantonment.

Military courts of requests.

CHAPTER IV.—POLICE.

9. The Police-force employed in any cantonment shall be deemed to be part of the general Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V of 1861 (*for the Regulation of Police*), section two, and all the provisions of the said Act shall be applicable to such force.

Act V of 1861 applicable to Police employed in cantonments.

The administration of the Police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment.

Administration of Police within cantonments.

Extension of section 34, Act V of 1861, to cantonments.

10. The Local Government may extend section thirty-four of the said Act No. V of 1861 to any cantonment situate in the territories administered by such Government.

Service of process sent by commanding-officer of cantonment.

11. The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief Police-officer in the cantonment for service or execution through the cantonment-police; and the said chief Police-officer shall serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

Power to extend Act XX of 1856 to cantonments.

12. The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX of 1856 (*to make better provision for the appointment and maintenance of Police Chaukídárs in Cities, Towns, Stations, Suburbs and Bázárs in the Presidency of Fort William in Bengal*), to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the Magistrate of the District and the Local Government.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the Magistrate of the District shall, during such absence or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

Power to order division of cantonments, &c.

13. The Local Government may order that any cantonment to which the provisions of the said Act No. XX of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section ten of the same Act.

Chapter V.—Spirituous Liquors.

Unauthorized sale of spirituous liquor.

14. If within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor, wine or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower or a soldier's wife, without a written license from the Officer Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such liquor, wine or drug, shall be liable on conviction to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping, as prescribed for offences under section two of Act No. VI of 1864 (*to authorize the punishment of whipping in certain cases*), subject to all the provisions of that Act.

Presumption in case of second conviction.

15. If any person convicted of an offence under section fourteen is again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him, or is in his possession shall, without further

LEGAL SECRETARIAT

proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.

Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit.

16. If within such cantonment or limits any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner, removes, conveys or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

Arrest of offenders under section 14 or 16, and seizure of spirituous liquor, &c.

17. If any person subject to the provisions of this Act is found committing any offence contrary to section fourteen or section sixteen, any Police-officer may immediately without warrant arrest such person, and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

Confiscation of such liquor, &c.

18. In case of a conviction for any offence under section fourteen or section sixteen, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

Detention of property seized.

19. Anything seized under section seventeen in respect of which any person is charged with an offence under this Act may be ordered to be detained until the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

Disposal of property seized.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

Saving of articles sold or supplied for medicinal purposes.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists or druggists.

CHAPTER VI.—MUNICIPAL TAXATION.

General power of taxation.

21. The Local Government may from time to time, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed.

Power to provide for assessment and collection of taxes.

22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may, from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

Application of proceeds of taxes.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section twenty-five.

Power to prohibit taxation in cantonments.

24. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

CHAPTER VII.—SUBSIDIARY RULES.

Power to make cantonment-rules.

25. The Local Government may from time to time make rules consistent with this Act to provide within the limits of any cantonment for the matters hereinafter mentioned.

Rules may be general or special.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

Rules to be confirmed by Governor-General in Council.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor-General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

For what matters rules may provide.

27. The rules made under section twenty-five may provide for all or any of the following matters:—

1*st*—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land,

and under which compensation shall be given to persons occupying or using the land so resumed;

2nd—maintaining proper registers of immoveable property within the limits of the cantonment, and providing for the registration of transfers of such property;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five; and the appointment of the necessary servants and establishments;

5th—the definition and prohibition of public nuisances;

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning-grounds and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

9th—the execution and promotion of works of public utility and convenience;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

11th—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days

Trial of breaches of rules.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXII of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District.

Fine how levied.

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

Imprisonment in case fine not levied.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

Prosecutions, &c., under other enactments.

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to

any other or higher penalty than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Extension of rules as to brothels and venereal disease.

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor-General in Council may extend to any place outside the limits of such cantonment, and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

Penalties for breach of rules in extended limits.

32. When such rules, with any additional rules made as aforesaid, are extended under section thirty-one to any place outside the limits of such cantonment, the Governor-General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

Effect of cantonment rules on enactments previously in force.

33. Whenever, in any cantonment, rules have been made under section twenty-five, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five, shall cease to have any effect.

Saving of jurisdiction of Courts-martial &c.

34. Nothing in the foregoing sections shall be deemed to affect the jurisdiction or military authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Provided that, when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding officer shall not exercise the powers described in clause (*c*) of Part III of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

Power to prescribe rules as to expenditure of funds raised under Act XX of 1856.

35. The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purpose of this Act, of any funds raised under the said Act No. XX of 1856. Such funds may be expended for the purposes of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX of 1856.

ACT No. V OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 22nd March, 1861.)

An Act for the Regulation of Police.

Preamble.

WHEREAS it is expedient to re-organize the Police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation.

I. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

"Magistrate of the District."

The words "Magistrate of the District" shall mean the Chief Officer charged with the executive administration of a District and exercising the powers of a Magistrate, by whatever designation the Chief Officer charged with such executive administration is styled.

"Magistrate."

The word "Magistrate" shall include all persons within the General Police District, exercising all or any of the powers of a Magistrate.

"Police."

The word "Police" shall include all persons who shall be enrolled under this Act.

"General Police District."

The words "General Police District" shall embrace any Presidency, Province, or place, or any part of any Presidency, Province, or place in which this Act shall be ordered to take effect.

"Property."

The word "Property" shall include any moveable property, money, or valuable security.

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender.

Words importing the masculine gender shall include females.

"Person."

The word "person" shall include a Company or Corporation.

"Month."

The word "month" shall mean a calendar month.

"Cattle."

The word "cattle" shall, besides horned cattle, include Elephants, Camels, Horses, Asses, Mules, Sheep, Goats, and Swine.

Constitution of the Force.

II. The entire Police establishment under a Local Government shall, for the purposes of this Act, be deemed to be one Police Force, and shall be formally enrolled; and shall consist of such number of Officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

The Police force employed in any cantonment is part of the General Police force within the meaning of this section, but the District Superintendent shall be subject to the general control

and direction of the commanding officer of such cantonment, Act III, 1880 S 9. Except in this respect S. 2 is repealed as far as it relates to the province under the control of the Lieut.-Governor of Bengal. Act VII (B. C.), 1869.

Superintendence in the Local Government.

III. The superintendence of the Police throughout a General Police District shall vest in and, subject to the general control of the Governor General of India in Council, shall be exercised by the Local Government to which such District is subordinate; and except as authorized under the provisions of this Act, no person, Officer, or Court shall be empowered by the Local Government to appoint, supersede, or control any Police Functionary.

Inspector General of Police, &c.

IV. The administration of the Police throughout a General Police District shall be vested in an Officer to be styled the Inspector General of Police, and in such Deputy Inspectors General, and Assistant Inspectors General, as to the Local Government shall seem fit. The administration of the Police throughout the local jurisdiction of the Magistrate of the District shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary. The Inspector General and other Officers abovementioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

Inspector General to have powers of a Magistrate.

To exercise them under the orders of Government.

V. The Inspector General of Police shall have the full powers of a Magistrate throughout the General Police District; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

VI. *Repealed by Act X of* 1882.

Inspector General &c. to appoint and dismiss.

VII. The appointment of all Police officers other than those mentioned in Section IV of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector General, Deputy Inspectors General, Assistant Inspectors General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any Police officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any Police officer to any amount not exceeding one month's pay, who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof.

Police officers to receive certificates of office.

VIII. Every Police officer, so appointed, shall receive on his appointment a certificate in the form annexed to this Act, under the seal of the Inspector General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a Police officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the Police Force, and shall be immediately surrendered to the superior officer of such person or to some other Officer empowered to receive the same.

Police officers not to resign without leave or two months' notice.

IX. No Police officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent or by some other Officer authorized to grant such permission, or, without the leave of the District Superintendent to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police officers not to engage in other employment.

X. No Police officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

XI. *Repealed by Act XVI of* 1874.

Inspector-General to make Rules.

XII. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules as he shall deem expedient, relative to the organization, classification, and distribution of the Police Force, the places at which the Members of the Force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the Police Force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such Force efficient in the discharge of its duties.

Additional Police officers employed at the cost of individuals.

XIII. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the District, on the application of any person showing the necessity thereof, to depute any additional number of Police officers to keep the peace at any place within the General Police District, and for such time as shall be deemed proper. Such Force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application. Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General or to the District Superintendent, to require that the Police officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional Force from the expiration of such notice.

Appointment of additional Force in the neighbourhood of Railway and other works.

XIV. Whenever any Railway, Canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional Police Force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional Force to such place, and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the Funds used in carrying on such work, manufactory, or concern, for the payment of the extra Force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional Police in disturbed or dangerous Districts.

XV. It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any Police Force in excess of the ordinary fixed complement, to be quartered in any part of the General Police District which shall be found to be in a disturbed or dangerous state, or in any part of the General Police District in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of Police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional Police Force, and the Magis-

trate of the District, after inquiry if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

Payment of money for support of additional Police Force.

XVI. All moneys payable under the last three preceding Sections, on account of any additional Police Force employed as therein directed, shall be recoverable under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the District of such Magistrate, or by suit in any competent Court; and the moneys paid on this account or so recovered shall be credited to a Fund to be called "The General Police Fund," and shall be applied to the maintenance of the Police Force under such orders as the Local Government shall pass.

Special Police officers.

XVII. When it shall appear that any unlawful assembly (*a*) or riot (*b*) or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer, not below the rank of Inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require, to act as Special Police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of Special Police officers.

XVIII. Every Special Police officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of Police.

Refusal to serve as Special Police officer.

XIX. If any person being appointed a Special Police officer as aforesaid, shall, without sufficient excuse, neglect, or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty Rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by Police officers.

XX. Police officers, enrolled under this Act, shall not exercise any authority, except the authority provided for a Police officer under this Act and any Act which shall hereafter be passed for regulating Criminal Procedure.

Village Police officers.

XXI. Nothing in this Act shall affect any Hereditary or other Village Police officer, unless such officer shall be enrolled as a Police officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding Section. No Hereditary or other Village Police officer shall be enrolled without his consent, and the consent of those who have the right of nomination. If any Police officer appointed under Act XX of 1856 (*to make better provision for the appointment and maintenance of Police Chowkeedars in Cities, Towns, Stations, Suburbs, and Bazars, in the Presidency of Fort William in Bengal*) is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District.

Police officer to be considered always on duty, and

XXII. Every Police officer shall, for all purposes in this Act contained, be considered to be always on duty,

may be employed in any part of the General Police District.

and may at any time be employed as a Police officer in any part of the General District.

Duties of Police officers.

XXIII. It shall be the duty of every Police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences (*a*) and public nuisances (*b*); to detect and bring offenders to justice; and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every Police officer, for any of the purposes mentioned in this Section without a warrant, to enter and inspect any drinking-shop, gaming-house, or other place of resort of loose and disorderly character.

Police officer may lay informations, &c.

XXIV. It shall be lawful for any Police officer to lay any information before a Magistrate, and to apply for a summons warrant, search warrant, or such other legal process as may by law issue against any person committing an offence. *Repealed by Act X*, 1882.

Court Inspectors' duties &c.

1. To cause attendance at the Magistrate's Courts and the Sessions &c. parties to case and witnesses, but not to keep the Register of the number of days such witnesses are in attendance, such duty pertaining to the Magistrate's amla.
2. All duties connected with the levy and receipt from Subdivisions of fines, and the remission thereof to the Treasury.
3. All duties connected with the Magistrate's *malkhana*.
4. All duties connected with stolen, intestate and unclaimed property.
5. To execute all summonses, warrants and other processes of the Local Criminal Courts.
6. To receive diet money for witnesses and to distribute the same.
7. To draw and pay subsistence-money granted to released prisoners and prisoners sent into the District or other Districts, keeping an account of the same.
8. To make all inquiries in respect to security tendered, and to certify to recognizances and security bonds being signed by the parties concerned, keeping a register of such securities and bonds. Pol. 12, July 5, 1864.

Records.—All Police reports connected with crime, including station diaries, should be sent to the Magistrate's record-room, where they will be dealt with as directed by the High Court. Cir. 6, Dec. 22, 1866.

Police officers to take charge of unclaimed property, and to be subject to Magistrate's orders as to the disposal of it.

XXV. It shall be the duty of every Police officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the District. The Police officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District.

Magistrate may detain property and issue proclamation.

XXVI. The Magistrate of the District may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Confiscation of property if no claimant appear.

XXVII. If no person shall within the period allowed claim such property, it may be sold under the orders of the Magistrate of the District and the proceeds shall be at the disposal of Government.

Persons refusing to deliver up certificate &c. on ceasing to be Police officers.

XXVIII. Every person, having ceased to be an enrolled Police officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred Rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, &c.

XXIX. Every Police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent Authority; or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; or who shall engage without authority in any employment other than his Police duty: or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Under orders of Govt.

No Magistrate except the Magistrate of the District shall institute proceedings against Police officers under S. 29. All cases when those orders have been violated should be reported through the District Magistrate for the information and orders of the Commissioner, a copy being sent to the Inspector General of Police. Cir. 6, Feb. 16, 1867.

Regulation of public processions, &c.

XXX. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets, or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass. They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

Police to keep order in public roads, &c.

XXXI. It shall be the duty of the Police to keep order on the public roads, and in the public streets, thoroughfares, ghauts, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads, and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghaut, or landing place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last two Sections, &c.

XXXII. Every person opposing, or not obeying the orders issued under the last two preceding Sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred Rupees.

Control of the Magistrate of the District under last three Sections.

XXXIII. Nothing in the last three preceding Sections shall be deemed to interfere with the general control of the Magistrate of the District over the matters referred to therein.

Certain duties of Police Officers.

XXXIV. Any person who, on any road, or in any street, or thoroughfare within the limits of any Town to which this Section shall be specially extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passen-

Obstructions and nuisances in roads.

gers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty Rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely :—

Slaughtering cattle Furious riding, &c.

First,—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

Cruelty to animals.

Second,—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Obstructing passengers.

Third,—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Exposing goods for sale on roads.

Fourth,—Any person who exposes any goods for sale.

Throwing dirt into street.

Fifth,—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like, or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

Being found drunk in any thoroughfare.

Sixth,—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Indecent exposure of person.

Seventh,—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Neglect to protect dangerous places.

Eighth,—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure.

The Local Government can extend the operation of this section to any cantonment. Act III, 1880, S. 10.

Proviso.

XXXV. [*In all cases of convictions under this Act, the officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict; provided that*] *Repealed by Act X of* 1882. Any charge against a Police officer above the rank of a Constable under this Act shall be inquired into and determined only by an Officer exercising the powers of a Magistrate.

Power to prosecute not affected.

XXXVI. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

Proviso.

Levy of forfeiture and penalties by distress.

XXXVII. All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate may, in case of non-payment thereof, be levied by distress and sale of the property of the offender within the limits of the jurisdiction of the Magistrate of the District, by warrant under the hand of the Magistrate who made the order.

XXXVIII. In case any such forfeiture or penalty shall not be forthwith paid, the Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security, to the satisfaction of the Magistrate, for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Procedure until return is made of warrant of distress.

XXXIX. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the Magistrate by the confession of the offender or otherwise, that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of the Magistrate, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Imprisonment if distress not sufficient.

XL. If the offender be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Levy of fines from European British subjects.

XLI. All sums paid for the service of process by Police officers, and all rewards, forfeitures, and penalties or shares of rewards, forfeitures and penalties which by law are payable to informers, shall, when the information is laid by a Police officer, be paid into the General Police Fund.

Rewards to Police and informers payable to General Police Fund.

XLII. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general Police powers hereby given, shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action. No plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by, or on behalf of the defendant, and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action. Provided always that no action shall in any case lie where such Officers shall have been prosecuted criminally for the same act.

Limitation of action.

Tender of amends.

Proviso.

XLIII. When any action or prosecution shall be brought or any proceedings held against any Police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the war-

Plea that act was done under a warrant.

rant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine. Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this Section.

Proviso.

XLIV. It shall be the duty of every officer in charge of a Police station to keep a General Diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined The Magistrate of the District shall be at liberty to call for and inspect such Diary.

Police officer to keep a Diary.

Registers and Returns of Police-stations.

The following are the books (16) and files (5) to be kept up at each Police-station :—

First information Report.

A, B and C Forms.

1. First information Report.
2. Form A (charges accepted).
3. Do. B (Do. refused).
4. Do. C (undetected cases). For instructions as to filling the above forms, see Rules for Police Procedure on Criminal cases.

5. Register of property stolen and recovered, form No 1 :—

Register of property stolen and recovered

Property should be entered in this register as stolen as soon as the case is reported true, and not otherwise, unless ordered

II. On a complaint involving loss of property being reported at a Police station, the complainant should be required to put in a list signed by himself, which should be sent to the Court officer with the First Information Report. A detailed list need not accompany the duplicate report to the District Superintendent, merely the description and aggregate amount of the reported loss should be stated. The investigating officer will, however, himself keep a copy to aid him in his inquiry.

Complainant to supply list of property stolen.

III. When complainants are unable to furnish a list of the property alleged to be stolen at the Police station, such list should be prepared by the investigating officer as soon after his arrival at the spot where the inquiry is to be made as possible, and be forwarded, duly signed by the complainant, to the Court officer. The aggregate value and description of the property should then be recorded in the special diary for the information of the District Superintendent.

IV. Only property ascertained to have been stolen should be entered in the register. The list put in by the complainant, a copy of which should be attached to the counterfoil of the First Information Report, will show what amount of property was alleged to have been stolen in the first instance.

Unclaimed and intestate property register.

6. Register of unclaimed and intestate property found, Form No. 2.

XLV. The Local Government may direct the submission of such Returns by the Inspector-General and other Police officers as to such Local Government shall seem proper, and may prescribe the form in which such Returns shall be made.

Local Government empowered to prescribe the form of Returns.

XLVI. This Act shall not take effect in any Presidency, Province, or place, unless the same shall be extended to such Presidency, Province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette. When the Act shall have been so extended, it shall be carried into effect in such Presidency, Province, or place as the Local Government, by an order to be published in the Official Gazette, shall direct.

Scope of Act.

Authority of District Superintendent of Police over Village Police.

XLVII. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the District over any Village Watchman or other Village Police officer for the purposes of Police, shall be exercised, subject to the general control of the Magistrate of the District, by the District Superintendent of Police.

FORM (*See Section VIII.*)

A, B, has been appointed a Member of the Police Force, under Act V of 1861, and is vested with the powers, functions, and privileges of a Police officer.

ACT No. IX OF 1874.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 7th April* 1874.)

An Act to consolidate and amend the Law relating to European Vagrancy.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The European Vagrancy Act, 1874:"

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections four to sixteen (both inclusive), nineteen, twenty, twenty-four and twenty-nine shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Repeal of Acts.

2. Acts No. XXI of 1869 (*to provide against European Vagrancy*) and No. XXVIII of 1871 (*to amend the European Vagrancy Act*, 1869) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

Interpretation-clause.

3. In this Act—

"Person of European extraction."

"Person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony,

(*b*) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians:

"Vagrant."

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Master of a ship."

"Master of a ship" includes any person in charge of a decked vessel;

"Magistrate."

And in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class.

PART II.

PROCEDURE.

Power to require apparent vagrant to go before Magistrate.

4. Any Police officer may within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

Whereon any person apparently a vagrant, refuses to or fails to comply with any requisition made by a Police officer under S. 4 he may forthwith be arrested by such Police officer without warrant for the purpose of being produced before the officer empowered to deal with the case. Rule III passed by the Governor General in Council.

Summary inquiry into vagrant's circumstances.

Declaration of vagrancy.

5. The Magistrate of Police or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go to work-house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

Forwarding vagrant to place of employment.

6. Where the officer making the inquiry mentioned in section five is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section one) in any place subject to any adjacent Local Government, such officer may in his discretion forward the vagrant to such place in charge of the Police and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section five.

Subsistence allowance.

8. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under section five, to the work-house, or, under section six, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police or Justice, before whom any vagrant is taken under section seven, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and such manner as it may from time to time direct.

The subsistence money shall not ordinarily be made over to the person, but shall be kept and disbursed on his account by the Police or other officer in whose custody he is for the time being. Rule IV passed by the Governor General in Council.

Power to give certificates.

9. Any Magistrate of Police or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections four, five, six and seven shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections four, five, six and seven shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first Schedule to this Act annexed, or as near thereto as circumstances will admit.

No certificate shall be given unless there be good ground for believing that the person applying for it is *bonâ fide* in search of employment and has a fair chance of obtaining it and is of quiet and orderly behaviour.

The certificate shall be printed on parchment or paper of very durable character and shall be in English with translation in the two principal vernacular languages of the territory under the Local Government. Rules V, VI passed by the Governor General in Council.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

10. The Local Government may from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.

GOVERNMENT WORK-HOUSES.

Provision of Government work-houses.

11. The Local Government, with the previous sanction of the Governor General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendence of work-houses.

12 Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

Search of vagrants.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor General in Council

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely)—

(*a*) solitary confinement within the work-house for any time not exceeding seven days;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days;

Or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants.

Cost of removal.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

or it may cause sections twenty-three and thirty to be read to him and may then release him.

The time shall not ordinarily exceed two months and shall not in any case exceed six months. Rule VII passed by the Governor General in Council.

Agreements with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Form of agreement.

Every such agreement may be on unstamped paper and shall be in the form set forth in the second Schedule to this Act annexed, or as near thereto as circumstances admit.

Power to perform agreement.

18. The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

Rule VIII. In a Presidency town, the Commissioner of Police and elsewhere Magistrates with full powers (that is of the first class) being also Justices of the Peace shall be competent to act on behalf of the Secretary of State in Council in making agreements under section 17.

Rule IX. All such agreements shall be executed in duplicate and the officer executing on behalf of the Secretary of State in Council shall retain one of the copies.

Rule X. When an agreement has been entered into by a vagrant under S. 17, he shall

be forwarded along with the original agreement in the charge of a Police officer to the officer at the Port of embarkation who is empowered by the Local Government to receive vagrants, and thereafter and until his embarkation he shall remain in the custody of that officer or of such other officer as the Local Government empowers on their behalf.

He shall during such term be entitled to subsistence allowance at eight annas *per diem* to be disbursed as directed by Rule IV. (See note to S. 8 *contra.*)

Rule XI. Local Governments within whose jurisdiction Ports are situate shall make all the necessary arrangements for the reception and custody of vagrants sent for deportation by other Local Governments or authorities in the interior. They will from time to time, as may be necessary, give notice of such arrangements to the forwarding authorities.

Road expenses shall be provided by the forwarding authority. All further expenses incurred in proceedings under Part IV of the Act shall be defrayed by the Local Government of the Port of embarkation on account of the Secretary of State in Council.

Rule XIII. No agreement for deportation shall be entered into with any person of European extraction born in this country, and who has never been out of it, unless he satisfies the Local Government that he is likely to gain a livelihood in some place out of India.

Rule XIV. The officers empowered to direct the deportation of vagrants will see that no unnecessary time is lost in providing passage for those who have entered into agreements to be deported. As a rule Europeans should be sent to Europe, Americans to America, West Indians to the West Indies, Australians to Australia and New Zealanders to New Zealand. But the Local authorities will exercise their discretion in sending vagrants to other countries than their own, when it appears that such a course will be for their advantage and that they will be favorably received on arriving at their destination.

Rule XV. Descriptive notes, and, as far as possible, photographs of all persons deported shall be kept by the Local Government or Administrations within whose territories the ports are situated. Rules passed by the Governor General in Council. *Gaz. India*, Oct. 22, 1870, p. 723.

PART V.

PENALTIES.

Refusal to go before Magistrate.

19. Any person refusing or failing to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section four, may be arrested without warrant and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Assaulting Police.

And any person who, when required under section four to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under section three hundred and fifty-three of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence.

Escaping from Police.

Quitting work-house without leave.

Failing to return to work-house.

20. Any vagrant who escapes from the Police while committed to their charge under the orders specified in sections five and six,

or who leaves a work house, under this Act, without permission from the Governor,

or who having with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section seventeen, and

Failing to proceed to port of embarkation.

failing to proceed in pursuance thereof to the port therein mentioned,

Refusing to go on board-ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Returning to India.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

Begging.

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. Every person imprisoned under section nineteen, twenty, twenty-one, twenty-two or twenty-three, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections five and six.

Procedure on close of imprisonment.

The order of transmission shall certify the fact of the previous conviction.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

Penalty on shipmaster bringing European convicts to India.

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due inquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

The Governor General in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

Power to exempt certain shipmasters.

The Governor General in Council may in like manner revoke any exemption made under this section.

26. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

Recovery of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from time to time directs.

Payment of fines.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

Prosecutions.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

Limits of jurisdiction.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice, before whom a person, apparently a vagrant, was required to appear or before whom a person was placed under section twenty-four, was not the nearest.

Validity of proceedings where Magistrate is not the nearest.

PART VI.

MISCELLANEOUS.

30. Any European British subject who, upon the summary inquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII of the same Code) applicable to an European not being a British subject.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act has not been passed, would have had no such jurisdiction.

31. Whenever any person of European extraction lands in India, or, being a Non-Commissioned Officer or Soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

Liability of importers of Europeans or employers of soldiers becoming vagrants.

and whenever a sailor of European extraction, not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date

of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,
or the agents in India for the sale of such animal,
or, if such consignee or agents cannot be found,
the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

'Consignee' defined.

For the purposes of this section 'Consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Agent' defined.

'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

Evidence of declaration under section 5.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section five, shall be *primâ facie* evidence that the European British subject named therein has been upon the summary inquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Exercise of power conferred on Local Government.

34. The powers and duties conferred and imposed by sections sixteen and eighteen, on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and Police officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Powers to make rules for guidance of officers.

36. The Governor General in Council may from time to time make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

These rules have been entered under the various sections to which they apply and have been published in the *Gazette of India*, Oct. 20, 1870, p. 723.

THE FIRST SCHEDULE.

(*See Section* 9.)

WHEREAS *E. F.* of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof and within the Province [*or* District] of nothing in sections four, five, six and seven of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*

Dated this day of 18 .

Magistrate of Police for the Town of *or* Justice of the Peace for exercising the powers of a Magistrate of the class.

THE SECOND SCHEDULE.

(*See Section* 17.)

ARTICLES OF AGREEMENT made this day of 18 BETWEEN the Secretary of State for India in Council of the one part and *C. D.* of, &c., [*the vagrant*] of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* (by order of the Governor General of India in Council [*or* the Governor of in Council *or* the Lieutenant-Governor of , *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

ACT No. XXI OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 14th November*, 1879.)

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

Short title.

Extent.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879":

It extends to the whole of British India;

to all Native Indian subjects of Her Majesty beyond the limits of British India; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

and it shall come into force on the passing thereof.

Saving of other laws and of treaties.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

Repeal.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and existing notifications, summonses, warrants, orders, and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

Interpretation-clause.

"Political Agent."

3. In this Act, unless there is something repugnant in the subject or context,—

"Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India:

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

"European British subject."

"European British subject" means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.—POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor General in places beyond British India, and delegation thereof.

4. The Governor General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

Notification of exercise or delegation of such powers.

5. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Appointment, powers and jurisdiction of Justices of the Peace.

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

Confirmation of existing Political Agents and Justices.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects out of British India.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

Repealed by Act X, 1882, Sch. I.

CHAPTER IV.—EXTRADITION.

Arrest and removal of persons other than European British subjects escaping into British India.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the Schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

Direction and execution of warrant.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

Requisitions for extradition by the Executive of any part of British dominions or Foreign power.

14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

Magistrate may in certain cases issue warrant for arrest of person accused of having

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State

committed an offence out of British India.

could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate to inform Political Agent or Local Government.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

Person arrested to be released after certain time if not proceeded against.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

Bail.

17. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.—MISCELLANEOUS.

Power to make rules.

18. The Governor General in Council may, from time to time, make rules to provide for—

(1) the confinement, diet and prison-discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

Execution of commissions issued by Foreign Criminal Courts.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

ACT VI OF 1864.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the* 18*th February* 1864.)

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code; that is to say:—

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

Whipping can also be imposed under S. 14, Act III, 1880, in lieu of other punishment, for the sale, &c., of liquor, &c., within cantonments and their neighbourhood, to or for the use of European soldiers and others by civilians without license.

No female shall be punished with whipping. S 7.

Section 2 applies to juvenile offenders as well as S. 5.—Jaikishen Girdhar, Bombay High Court. October 2, 1873.

There is no appeal from a sentence of whipping *only* passed by a Court of Session, Magistrate of the District, or Magistrate of the first class All Magistrates, except Magistrates of the third class, can pass sentence of whipping.—Code of Criminal Procedure, S. 20.

Section 391 of the Code of Criminal Procedure, and S. 9 of this Act, provide for suspension of a sentence of whipping passed in addition to imprisonment, but in cases in which no other punishment has been awarded, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of the sentence already carried out, and not to bring under review the sentence itself with a view to its revision.—Calcutta High Court, 314, 1861; Madras High Court, May 10, 1864.

Abetments of the offences mentioned in S. 2 may generally be punished with whipping. as the Indian Penal Code, in providing the punishment for nearly every case of abetment, declares that the punishment for the substantive offence shall be awarded.—See Ss. 109, 110, 111, 112, and 114. Attempts to commit any of these offences are not punishable with whipping—Calcutta High Court, 425, 1864; Yalla Vallad Parshia, 3 Bomb., 37, *Crown Cases.*

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping, in lieu of, or in addition to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

Section 403 of the Code of Criminal Procedure declares how a previous conviction may be proved. Identity should also be proved.—Nuzee Nushyo, 15 W. R., 52.

Section 221 of the Code of Criminal Procedure declares that if it is intended to prove a previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

The Calcutta High Court has held that a sentence of imprisonment and whipping passed on a person convicted of "theft," and who had been previously convicted of "receiving stolen property," is illegal, as the convictions in both cases should have been for the same offence.—Amarut Sheikh, 4 W. R., 20; Soorajoodeen, Panj. Rec, 1864, p. 64.

Similarly, a sentence of whipping in addition to imprisonment passed on a person convicted of theft in a house (S. 380, Penal Code), on the ground that he had been previously convicted of theft (S. 379), has been held to be illegal, since the previous conviction was not for the same specific offence.—5 Mad. XXXVIII, *App.* Pro. Oct. 28, 1870, Pro. Nov. 25, 1864. Weir, 416; Changra Valad Shermia, 7 Bomb., 68, *Crown Cases.*

Both convictions must have been under the Indian Penal Code, consequently, if the first offence was committed before 1st January 1862,—that is, before that Code became law in the Presidency of Bengal—the offender would not, by reason of a second conviction of that offence, be liable to whipping —Calcutta High Court, 425, 1864.

The offence must have been committed after a conviction of the same offence to legalize the passing of sentence of whipping under Sections 3 and 4.—Sarya bin Krishna Mandakar, 3 Bomb., 37, *Crown Cases.*

Section 3 applies to juvenile offenders as well as S. 5.—Jaikishen Girdhar, Bombay High Court, Oct. 2, 1872.

The object of the law is to inflict whipping in addition to other punishments upon those persons only who, having completed a previous sentence, and after having a *locus penitentiæ* afforded them, again commit the same offence, and show that they are not to be deterred by sentence of imprisonment only.—Udai Patnaik, 4 B L. R, 5; 12 W. R., 68. But the Madras High Court had held that it is necessary that there should have been a previous conviction only, and not that the sentence should have been carried out, so that where a person convicted of having committed on the same day two distinct offences of house-breaking by night in order to commit theft (Sec. 457, Penal Code), was sentenced to imprisonment for one and to whipping for the other offence, the sentences were held to be good.—5 Mad. XVIII, *App.* Feb. 18, 1870.

A Magistrate should not transfer to the jail of another district a convict who has been sentenced to imprisonment *and* whipping until the latter sentence has been executed, annulled, or commuted.—Agra Suddor Court, Cir. 9, 1865.

In connection with S. 3 read S 9 and S 391 of the Code of Criminal Procedure, the effect of which is to defer the immediate execution of sentences of whipping, when such are passed *in addition* to imprisonment, for all sentences are appealable in which whipping is not the sole punishment.

As regards the passing of sentences of whipping on persons convicted of abetments of, or attempts to, commit offences punishable with whipping, see note to S. 2.

If the previous conviction was set aside on appeal, a sentence of whipping cannot be passed on an additional imprisonment, S. 3 does not require that the second offence should have been committed after a previous conviction and certainly not that the sentence which followed on that conviction should have been undergone. Sentence of whipping could therefore be passed in a trial for the second offence commenced immediately the sentence was passed in the first —Mad. H. Ct. Nov. 25, 1864. Weir, 417. The same matter was again considered by the FULL COURT, a majority of which held that a Magistrate was competent on a second conviction at the same time to pass a sentence of whipping in substitution for, or in addition to imprisonment, subject to the restrictions of the Whipping Act itself as to the amount.—Mad. H. Ct. Pro. Feb. 18, 1870. Weir, 417.

The fact that the accused admitted that he had been flogged at a certain Magistrate's Court for "starting a Cumboo" is not sufficient for a sentence of whipping without production of the record of the conviction or oral evidence or to the specific offence of which he was convicted. A sentence of whipping under S 3 in addition to imprisonment was therefore set aside as illegal. —Mad. H Ct. Pro. Sept. 12, 1876. Weir, 419.

Offences punishable, in cases of second conviction, with whipping in addition to other punishment.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code,—that is to say :—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

See note to S. 3, which applies generally to this section. No females shall be punished with whipping; nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, or males whom the Court considers to be more than forty-five years of age, S. 393, Code of Criminal Procedure.

The previous conviction must have been for the *same* offence as that under trial in order to legalise a sentence of whipping under S. 4.—Bapji Valad Bapia, 4 Bomb., 5, *Crown Cases;* Amarut Sheikh, 4 W. R., 20; Soorajoodeen, Panj. Rec., 1864, p. 64; 5 Mad. XXXVIII, *Arv.* Pro. Oct. 28, 1870.

See note to S. 2, regarding the passing of sentences of whipping on persons convicted of abetments of, or attempts to, commit offences punishable with whipping.

Juvenile offenders punishable with whipping for offences not punishable with death.

V. Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

See note to S. 2 regarding appeals from such sentences.

The Agra Sudder Court (May 7, Sept. 24, 1864), and also the Bombay High Court (Mahomed Ali. 8. Bomb., 5, *Crown Cases*), have defined "juvenile" under this Section to be persons under 16 years of age, but the Madras High Court has left it to Judges and Magistrates to exercise their own good sense and experience in determining this point.—Madras High Court, Nov. 25, 1864. The Code of Criminal Procedure, S. 392, in re-enacting S. 10 of this Act, has for the term "juvenile" substituted "a person under 16 years of age"

Sections 2, 3, 4 apply to juvenile offenders equally with S. 5.—Jaikishen Girdhar, Bombay High Court, Oct. 2, 1873.

When offences specified in Section 4 may be punished with whipping in frontier districts and wild tracts.

VI. Whenever any Local Government shall, by notification in the official Gazette, have declared the provisions of this Section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

VII. *Repealed by Act X*, 1872.

VIII. *Repealed by Act X*, 1872.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

IX. When the punishment of whipping is awarded in addition to imprisonment by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court; but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the fifteen days.

This Section has been re-enacted by S. 391 of the Code of Criminal Procedure.

Mode of inflicting the punishment.

X. In the case of an adult, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person as the Local Government shall direct; and, in the case of a juvenile offender, it shall be inflicted in the way of school discipline with a light rattan. In no case, if the cat-o'-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or if the rattan be employed, shall the punishment exceed thirty stripes. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorized to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

This Section should be read with S. 391 of the Code of Criminal Procedure.

XI. *Repealed by Act X*, 1872.

XII. *Repealed by Act X*, 1872.

ACT No. V OF 1876.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 29th February* 1876.)

An Act to provide Reformatory Schools.

Preamble.

WHEREAS it is expedient to provide Reformatory Schools for male youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Reformatory Schools Act, 1876:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force in each Province of British India on such day as the Local Government by notification in the official Gazette directs in that behalf.

Extended to Bengal.—*Cal. Gaz.* 1878, p. 138.

Section 318 of Code of Criminal Procedure repealed.

2. On and from that day section 318 of the Code of Criminal Procedure shall be repealed therein.

Interpretation-clause.

3. In this Act—

"Youthful offender."

"Youthful offender" means any boy who, being at the time under the age of sixteen years, has been convicted of any offence punishable with imprisonment or transportation:

"Inspector-General."

"Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector of Jails.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

4. With the previous sanction of the Governor General in Council, the Local Government may—

(*a*) establish Reformatory Schools at such places as it thinks fit,

(*b*) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules consistent with this Act as the Local Government may from time to time prescribe in this behalf,

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools.

5. Every school so established or used must provide—

(*a*) sufficient means of separating the inmates at night;

(*b*) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(*c*) the means of giving such offenders industrial training;

(*d*) an infirmary or proper place for the reception of such offenders when sick.

Inspection of schools.

6. Every Reformatory School shall, before being used as such, be inspected by the Inspector-General of Jails, and if he reports that the requirements of section five have been complied with and that in his opinion such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, and the school shall thereupon be deemed a Reformatory School.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

Power of Courts to direct youthful offenders to be sent to Reformatories.

7. Whenever any youthful offender is sentenced to transportation or imprisonment, and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

The powers so conferred on the Court shall be exercised only by (*a*) the High Court, (*b*) the Court of Session, (*c*) a Magistrate of the first class, and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras and Bombay.

Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatories.

8. Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such Jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

"Magistrate" defined.

In this section "Magistrate" means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.

Government to determine Reformatory to which such offenders shall be sent.

9. Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.

10. Nothing contained in section seven, eight or nine shall be deemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

Boys above eighteen not to be detained in school.

11. The Local Government may at any time order any youthful offender—

Discharge or removal by order of Government.

(*a*) to be discharged from a Reformatory School;

(*b*) if so discharged before the expiration of his sentence, to undergo the residue of such sentence at such place as the Local Government thinks fit; or

(*c*) to be removed from one Reformatory School to another such school situate within the territories subject to such Government, but so that the whole period of his detention in a Reformatory School shall not be increased by such removal.

III.—Management of Reformatory Schools.

12. For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

Appointment of Superintendent and Committee of Visitors or Board of Management.

Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

The Local Government may from time to time suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

13. Every Superintendent so appointed may permit any youthful offender sent to a Reformatory School who has attained the age of fourteen years, by license under his hand, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation or calling.

Superintendent may license youthful offenders to employers of labour.

The license shall be in force for three months and no longer, but may, at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

14. The license shall be cancelled at the desire of the employer named in the license;

Cancellation of license.

and if it appears to the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

If complaint of employers just, no fresh license until expiry of twelve months.

15. If during the term of the license the employer named therein die, or cease from business, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Determination of license.

16. If it appears to the Superintendent that the employer has ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Cancellation of license in case of ill-treatment.

17. The Superintendent of any Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*).

Superintendent to be deemed guardian of youthful offenders.

and if it appear to the Superintendent that any such offender licensed under section thirteen has behaved well during one or more periods of his license, the Superintendent may apprentice him under the provisions of the said Act, and on such apprenticement the right to detain such offender in the school shall cease and the unexpired term (if any) of his sentence shall be cancelled.

Power to apprentice youthful offenders.

18. Every Committee of Visitors appointed under section twelve for any Reformatory School shall, at least once in every month,

Duties of Committee of Visitors.

(*a*) visit the school, to hear complaints and see that the requirements of section five have been complied with, and that the management of the school is proper in all respects,

(*b*) examine the punishment-book,

(*c*) bring any special cases to the notice of the Inspector-General, and

(*d*) see that no person is illegally detained in the school.

19. If in exercise of the power conferred by section twelve, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections thirteen to seventeen, both inclusive; and the license mentioned in section thirteen may be under the hand of their chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Powers of Board of Management.

20. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section four, clause (*b*), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

21. With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

Power of Board to make rules.

(*a*) the conduct of business of the Board,

(*b*) the management of the school,

(*c*) the education and industrial training of youthful offenders,

(*d*) visits to and communication with youthful offenders,

(*e*) punishments for offences committed by youthful offenders,

(*f*) the granting of licenses for employment of youthful offenders.

In the absence of a Board of Management, the Local Government may from time to time make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in clauses (*b*), (*c*), (*d*), (*e*) and (*f*) of this section, and also the mode in which the Committee of Visitors shall conduct their business.

22. The Governor General in Council may from to time make rules consistent with this Act for regulating the periods for which Courts and Magistrates may send youthful offenders to Reformatory Schools according to their ages, the nature of their respective offences, or other considerations.

Power of Government of India to make rules.

All rules made under this section shall be published in the *Gazette of India.*

The following rules are in force in the Reformatory School at Alipore, Bengal :—

Rule I. No boy shall be sent to a Reformatory School on a first conviction (except as provided in Rule III) if under ten years of age for a less period than five years, if over ten, for a less period than three years, unless he shall sooner attain the age of 18.

Rule II. On a subsequent conviction for a similar offence, a boy under ten years of age shall not be sent to a Reformatory School for a less period than seven years; if over ten, for a less period than five years, unless he shall sooner attain the age of 18.

Rule III. A first conviction may bring a boy under Rule II—

(1) if he belongs to a criminal tribe within the meaning of Act XXVII of 1871, Section 2;

(2) if either of his parents is an habitual criminal;

(3) if he is destitute; and

(4) if the offence of which he is convicted is one arguing great depravity.*—Govt. of India, Mar. 13, 1878.

IV.—Offences in relation to Reformatory Schools.

Penalty for abetting escape of youthful offender.

23. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one hundred rupees, or with both.

Arrest of escaped youthful offenders.

24. A Police officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school, or from his employer, and take him back to such school or to his employer.

ACT No. V OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 27th January* 1871.)

An Act to consolidate the laws relating to Prisoners confined by order of a Court.

Preamble.

FOR the purpose of consolidating the laws relating to prisoners confined by order of a Court; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Prisoners' Act, 1871":

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the passing thereof.

Repeal of Acts.

2. The Acts mentioned in the Schedule hereto annexed are repealed to the extent specified in the third column of the said Schedule.

* The word "depravity" here means a general corruption of morals apart from the specific criminality of the particular act.

II.—Prisoners in the Presidency Towns.

Warrants and writs to be directed to Police officers.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to and executed by any officer of Police within the local limits of such jurisdiction.

Power to appoint Superintendents of Presidency Prisons.

4. The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

All such officers appointed under any Act hereby repealed, shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison, in Madras, the Superintendent of Prisons for the town of Madras, and in Bombay, by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as 'the Superintendent.'

Superintendents to detain persons committed.

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to return writs, &c., after execution or discharge.

6. The Superintendent shall forthwith after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Delivery of persons sentenced to imprisonment or death.

7. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

8. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Order under Mutiny Act for intermediate custody.

9. Whenever any Judge of a High Court makes, under any Act for the time being in force for punishing mutiny and desertion, and for the better payment of the Army and their quarters, an order for the intermediate custody of an offender sentenced by a Court Martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

Committals by High Court in execution of a decree or for contempt.

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Delivery of persons sentenced by Police Magistrate.

11. Whenever any person is sentenced by a Magistrate of Police for the town of Calcutta, Madras, or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody pending inquiries under Act XXIII of 1861, section eight.

13. Pending any such inquiry as is mentioned in section eight of Act No. XXIII of 1861 (*to amend Act VIII of* 1859), which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to the provisions as to deposit of fees and as to release on security contained in the same section,

and the Superintendent is hereby authorized and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under Act No. IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*),

or in pursuance of a warrant issued under section three of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction;

and if such Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

Warrants under Regulations for confinement of State prisoners.

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 (*for the better Custody of State Prisoners*), and Act No. III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

III.—Prisoners in the Mofussil.

Officers in charge of prisons may give effect to sentences of certain Courts.

16. Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor General in Council, or of any Local Government.

Warrant of officer of such Court to be sufficient authority.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

Imprisonment in British India of persons convicted of certain offences in Native States.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences:—

counterfeiting coin,
uttering counterfeit coin,
murder,
culpable homicide not amounting to murder,
being a thug,
voluntarily causing grievous hurt,
administering poison,
kidnapping,
selling minors for purposes of prostitution,
rape,
robbery,
dacoity,
dacoity with murder,

robbery or dacoity with attempt to cause death or grievous hurt,
attempt to commit robbery or dacoity when armed with a deadly weapon,
making preparation to commit dacoity,
belonging to a gang of dacoits,
dishonest misappropriation of property,
breach of trust,
house-burning,
house-breaking,
forgery, and
theft of cattle;
or for an attempt to commit any of the above offences,

or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe:

Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor General in Council, is one of the presiding Judges.

Proviso.

20. Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

Certificate of conviction.

Copy of proceedings.

IV.—Convicts sentenced to Penal Servitude.

Persons sentenced to penal servitude where sent, and how dealt with.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor General in Council by general order, from time to time, directs;

and may, during such time, be kept to hard labour;

Intermediate imprisonment.

and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

Time of intermediate imprisonment to count in discharge of sentence.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence

Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

Power to grant license to convict sentenced to penal servitude.

23. The Governor General in Council may grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor General in Council seem fit.

The Governor General in Council may at any time revoke or alter such license.

24. So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

Holder of license to be allowed to go at large.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

Apprehension of convict where license revoked.

26. Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

Execution of warrant.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Apprehended convict to be brought up for re-commitment.

Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the recommitment of the convict to the prison from which he was released by virtue of the said license.

28. Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term, as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Re-commitment.

29. If a license be granted under section twenty-three upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

Penalty for breach of condition of the license.

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

V.—Removal of Prisoners.

30. When any person is, or has been, sentenced to imprisonment by any Court, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

Removal from one jail to another in territories under Local Government.

31. Whenever it appears to the Local Government that any person, detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, such Government, by a warrant setting forth the grounds of belief that such person is of unsound mind, may order his removal to a lunatic asylum, or other fit place of safe custody, within the territories subject to the same Government, there to be kept and treated as the Local Government directs during the remainder of the term of imprisonment

Removal of lunatic prisoners.

ordered by the sentence; or, if it be certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be detained under medical care or treatment, then until he is discharged according to law.

Remand on recovery.

When it appears to the said Government that such prisoner has become of sound mind, the Local Government, by a warrant directed to the person having charge of the prisoner, shall remand the prisoner to the prison from which he was removed, if then still liable to be kept in custody, or if not, shall order him to be discharged.

Discharge.

Act XXXVI of 1858, section nine, applied to prisoners in lunatic asylum.

The provisions of section nine of Act XXXVI of 1858, (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under this section after the expiration of the term of imprisonment to which he has been sentenced; and the time during which he has been so confined shall be reckoned as part of such term.

Government of India may order removal of prisoners from one prison to another.

32. When any person is, or has been, sentenced to imprisonment by any Court, the Governor General in Council may order his removal during the period prescribed for his imprisonment, from the prison in which he is confined to any other prison in British India.

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

33. *Superseded by Act IX*, 1882, S. 2.

Power to make rules as to convicts.

34. The Governor General in Council may, from time to time, prescribe rules as to the following matters:—

the classification of convicts;

their confinement, treatment, discipline, and employment;

their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—DISCHARGE OF CONVICTS.

Discharge of convicts recommended for pardon.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

ACT No. III OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 8th March 1879.)

An Act to authorize the destruction of Useless Records.

Preamble.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

Short title. Local extent. Commencement.

1. This Act may be called "The Destruction of Records Act, 1879:" it extends to the whole of British India; and it shall come into force at once.

Power to High Court to make rules for disposal of records, &c.

2. The High Court may, from to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(*b*) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-Authority.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

Bar of suits.

Interpretation-clause.

7. In this Act "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces—the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Panjab—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Saving of documents kept under provision of law.

9. The enactments specified in the Schedule hereto annexed shall be repealed to the extent mentioned in the third column.

Repeal of enactments.

THE SCHEDULE.

(See section 9).

Enactments repealed.

(*a*).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875 ...	The Central Provinces Laws Act, 1875.	In section eight, clause (*c*), the last twenty-one words.
XVIII of 1876 ...	The Oudh Laws Act, 1876.	In section thirty-nine, clause (*c*), the last eighteen words.

(*b*)—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865 ...	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869 ...	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(*c*)—REGULATION UNDER 33 VIC., C. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877 ...	The Ajmer Laws Regulation, 1877.	In section forty, clause (*c*), the last twenty-one words.

RULES

FOR THE DESTRUCTION OF

CRIMINAL RECORDS.

The following rules made under authority conferred by Section 2, Act III of 1879, are laid down for the guidance of the Subordinate Criminal Courts in the destruction of useless records and papers :—

Records of Criminal Trials.

The periods for which the records shall be preserved shall be as follows :—

I.—In (*a*) Sessions trials and appeals to the Court of Session, and (*b*) non-bailable Magistrates' cases, the "material portions" of the record which have been marked off for preservation in the fly-leaf prescribed by Rule 50, Chapter VI, pp. 123 and 124, General Rules and Circular Orders (Criminal), shall be preserved ... ... 14 *years.*

NOTE.—By the "material portions" are meant papers bearing on the offence charged, and material to elucidate or justify the decision, such as—

1. Papers to show how the proceedings were initiated, *e. g.*, petition of complaint, or first information to the police.
2. Examination of any witness taken on commission.
3. Confessions or statements of accused before trial.
4. Depositions of witnesses, and statements of accused in the course of the trial.
5. Finding, sentence and judgment.

II.—In possession cases under Chapter XL, C.C.P., the material portion .. 7 *years.*

III.—In security cases under Chapter XXXVIII, C. C. P., the material portion ... ... 5 *years.*

IV.—In (*a*) all miscellaneous cases not included in II and III, and (*b*) Magistrates' bailable cases, the material portion ... ... 2 *years.*

V.—In cases of all the above descriptions, the second or non-material portion of the record, which has been separately indexed in the fly-leaf ... 2 *years.*

Such as—

1. Police and other reports;
2. Process record, consisting of returns of summons, warrants and notices, and the like;
3. Vakalatnamahs and muktarnamahs, except General Powers-of-Attorney,
4. Miscellaneous petitions filed in the course of trial.

N. B.—Rules I to V must be read in connection with Rule VI.

VI.—In cases in which the accused has been acquitted, or in which the accused has been executed under a capital sentence ... 1 *year.*

VII.—The following records shall not be liable to destruction :—

1. Record of any case in which the sentence has not expired.
2. Record of any case in which any of the accused or parties proceeded against has not been apprehended.

3. Record of any case in which the accused has been convicted of an offence, a repetition of which renders the offender liable to whipping or to enhanced punishment.

VIII.—Sessions Judges and Magistrates may, at their discretion, preserve any particular paper, or the record of any particular case beyond the above periods.

Exhibits.

IX.—Exhibits, *i. e.*, documents admitted and used, shall in no case be destroyed.

X.—To every copy of a judgment given to any of the parties to a case, a notice shall be attached, calling upon him or them to withdraw his or their documentary evidence as soon as the judgment shall become final. In such cases, no separate notice under Rule XII will be required.

XI.—When exhibits are separated from the records for permanent preservation as provided for in Rule 50 (*b*), Chapter VI,* they shall be tied up in a parcel with the detailed index sheet of documents required by that Rule; and a number shall be attached to each parcel, which shall be noted on the fly-leaf or general index sheet of the record required by Rule 50 (*a*), Chapter VI,* to facilitate the finding of these documents if subsequently claimed.

XII.—On the judgment becoming final, notice shall, whenever practicable, be given to the person or persons on whose behalf they were brought into Court, requiring him or them to take them back into his or their own keeping within six months from the date of the notice, and copies of the notice shall be put up in the Courts of the Sessions Judge and District Magistrate, and in the Court in which the case was tried; or if such Court have been abolished, in such other Court or Courts as may be exercising jurisdiction in its place.

XIII.—When returning documents, Judicial Officers must take care that documents which the Court has impounded are not delivered out of the custody of the Court.

XIV.—Sessions Judges and District Magistrates must make the best arrangements for the custody of the documents removed from the records that circumstances admit of; the notices must distinctly warn the owners that they will be kept at their risk, and that the Court declines all responsibility for them.

Papers other than records of cases.

Rules IX, X and XI have been added in accordance with Mr. Justice Morris' minute on the Magistrate of Dacca's No. 1582, dated 4th July 1881.

XV.—Office copies of all periodical statements submitted to the High Court shall be destroyed at the expiration of the following periods:—

(*a*)	Monthly and quarterly statements, ...	3 *years.*
(*b*)	Half-yearly and annual statements, ...	7 *years.*

XVI.—In respect of—

(*a*) Periodical statements received from the Lower Courts.
(*b*) Proceedings of other Courts and offices forwarding notices, &c.
(*c*) Proceedings of the Lower Courts, calling for records, asking for information, &c.
(*d*) Reports from ministerial officers, not relating to particular cases.

Judges and Magistrates must exercise their discretion in preserving reports, returns, and proceedings likely to be useful in the future as containing the results of enquiries or other information, or the opinions of experienced officers on matters connected with the general administration of justice.

* *i. e.*, of the High Court's Rules and Orders (Civil), 1881.

General.

XVII.—The destruction of all records and papers of the Criminal Courts, which is hereby directed, shall be carried into effect by burning. The practice of selling them as waste paper, which the Court understands to prevail in some districts, is prohibited. Sessions Judges and Magistrates must adopt such precautions as will satisfy them that the papers set aside for destruction are not otherwise dealt with.

XVIII.—The above Rules shall be acted on from year to year at the close of each calendar year, so that no accumulation, beyond the periods prescribed, may be allowed to occur.

XIX.—The above Rules must be read in connection with the provisions of Section 8, Act III of 1879.

ROMESH CHUNDER MITTER.
H. S. CUNNINGHAM.
W. F. MCDONELL.
A. WILSON.
L. R. TOTTENHAM.
ALEX. T. MACLEAN.
CHAS. D. FIELD.
J. O'KINEALY.
MOHENDRO NATH BOSE.
JONES A. PIGOT.

INDEX.

PAGE

A.

ABATEMENT of appeals, S. 431 410
ABDUCTED FEMALES, power to compel restoration of, S. 551 507
ABETMENT of breach of the peace, security on conviction of, S. 106 ... 112
of any offence in any place constitutes breach of bond for keeping the peace or for good behaviour, S. 121 125
may be inquired into and tried where offence was abetted or where offence abetted was committed, S. 181 195
charge when one person is accused of an offence, and another of, S. 239 253
of certain offences may be tried summarily, S. 260 270
authority to confer on certain Benches power to try summarily, S. 261 274
of compoundable offences, may compounded, S. 345 336
of suicide: form of charge, S. ch. V, 28 615
ABSCONDER, publication of proclamation for, S. 87 100
attachment of property of, S. 88 101
restoration of attached property to, S. 89... 103
issue of warrant in lieu of, or in addition to, summons, in order to check absconding, S. 90 104
record of evidence when accused has absconded, S. 512 472
ACCIDENT, RAILWAY, rules prescribed by Governor General in Council with regard to, S. 174 185
ACCOMPLICE, testimony of, S. 298 *note*, S. 337 *note* 304, 325
tender of pardon to, S. 337 323
ACCUSED, detention of, when investigation, cannot be completed in 24 hours, S. 167 171
release of, after investigation, when evidence deficient, S. 169 ... 173
treatment of, when evidence sufficient, S. 170 173
not entitled to call for police diaries, S. 172 176
triable in district where act is done, or where consequence ensues, S. 179 192
issue of process by Magistrate for attendance of, S. 204 ... 220
personal attendance of, may be dispensed with, S. 205 222
magistrate to take all evidence produced at enquiry on behalf of, S. 208 223
to issue process for further evidence, when desired by, S. 208 224
discharge of, on inquiry, S. 209 226
examination of, by Magistrate, S. 209 *note* 227
order of commitment of, S. 213 229

PAGE

ACCUSED, custody of, pending trial, S. 220 239
alteration in charge to be read and explained to, S. 227 .. 245
when, charged with one offence may be convicted of another, S. 237 252
acquittal of, in summons case, on non-appearance of complainant, S. 247 258
discharge of, in warrant case, S. 253... 263
right of, to re-call and cross-examine witness, in warrant case, S. 256 265
magistrate in warrant case to issue process for further evidence on application of, S. 257 268
discharge of, in absence of complainant, in warrant case, S. 259 ... 269
objections to jurors by, S. 277 288
discharge of jury in case of sickness of, S. 283 291
examination of, before magistrate, to be read as evidence, S. 287 ... 292
right of, to be defended, S. 340 328
not understanding proceedings; procedure, S. 341... ... 329
power of Court to examine, S. 342 330
no influence to be used to induce or prevent disclosure by, S. 343... 333
term of custody when, remanded, S. 344 334
forwarding, to higher authority, when magistrate cannot pass sentence sufficiently severe, S. 349 341
record of examination of, except in certain cases, S. 364 354
when sentenced to death to be informed of period allowed for appeal, S. 371 361
notice of appeal against acquittal to be given to, S. 422 405
abatement of appeal on death of, S. 431 410
when to have an opportunity of being heard by Court of revision, S. 440 418
record of evidence in absence of, S. 512 472
form of summons to, Sch. V, 1, ... 603
of proclamation requiring presence of, Sch. V, 4, ... 604

ACQUITTAL in summons case on non-appearance of complainant, S. 247 ... 258
in warrant-case, S. 258 668
Judge's entry that accused should not be re-tried after discharge of jury to operate as an, S. 308 312
discharge of defendant on Advocate-General staying prosecution not to amount to an, S 333 322
composition to have effect of, S. 345 336
judgment of, S. 367... 358
when sentence is submitted for confirmation High Court may order, S. 376 365
Sessions Judge may order, S. 380 366
no person after, to be tried for the same offence, S. 403 392
appeal on behalf of Government against an, S. 417... ... 400
notice of appeal against, to be given to accused, S. 422 405
appeal against: arrest of accused, S. 427 409
abatement of appeal against, S. 431 410
on ground of lunacy: accused to be kept in safe custody, Ss. 470, 471 ... ... 437, 440
of accused upon withdrawal of Public Prosecutor from prosecution, S 494 460
previous, how proven, S. 511 471

PAGE

ADDITIONAL SESSIONS JUDGE; SEE SESSIONS JUDGE—ADDITIONAL—
ADJOURNMENT in summons-cases, S. 247 258
of inquiry or trial, S. 344 334
pending execution of commission, S. 508 469
ADMISSION when admissible S. 209 *note* 228
conviction of accused in summons case on, of truth of accusation, S. 243 256
ADULTERY prosecution for, S. 199 214
complaint by husband necessary before cognizance taken of, S 238 252
compoundable, S. 345... 336
valid excuse for wife refusing to live with her husband, S. 488 ... 453
wife living in, not entitled to maintenance, S. 488 453
ADVOCATE GENERAL, who is included in the term, S. 4 40
may conduct prosecution without obtaining special permission, S. 495 461
power of, to stay proceedings, S. 333 322
application for transfer of case by, S. 526 ... 480
AFFIDAVIT, Courts and persons before whom, may be sworn, S. 539 491
AFFIRMATION, Courts and persons before whom, may be made, *ib.* ... *ib.*
AFFRAY, Public to assist in suppression of, S. 42 70
issue of order in urgent cases of nuisance for prosecution of, S. 144 143
AGE objection to juror on ground of, S. 278 288
AGENT of owners or occupiers of land bound to report certain matters, S. 45 .. 73
of accused not entitled to call for police diary, S. 172 176
ALIENAGE, objection to juror on ground of, S. 278 288
ALLOWANCE, alteration of, under order of maintenance, S. 489 456
ALTERATION of charge after commitment, S. 226 245
of any charge may be made by any Court before judgment, but must be read and explained to accused, S. 227 ... ... *ib.*
of charge, when trial may be proceeded with on, S. 228 ... *ib.*
of charge, when new trial may be directed or trial suspended on, S. 229 246
of charge, stay of proceedings on, if prosecution of offence in altered charge require previous sanction, S. 230 ... ... *ib.*
of charge, recall of witnesses on, S. 231 ... ... *ib.*
Court not to alter its judgment, S. 369 360
in maintenance allowance, S. 489 456
of order for disposal of property, S. 520 477
ALTERNATIVE, judgment in, S. 367 358
charge, specimen of, Sch. V, 28 615
AMENDMENT of jury's verdict, S. 304 308
AMERICAN, mixed jury for trial of, S. 451 422
jury when, tried jointly with one of another race, S. 461 431
ANNOYANCE to persons lawfully employed, issue of order in urgent cases of nuisance in view to prevention of, S. 144 143
ANSWER, what questions witness at police investigation bound to, and may refuse to, S. 161 162
witnesses at police investigation into sudden or unnatural death bound to, S. 175 190
to question put by Judge in order to ascertain jury's verdict, to be recorded, S. 303 307

PAGE

ANSWER given by accused to be recorded in full: accused may explain or add to his answers, S. 364 354
imprisonment or committal on refusal to, S. 485 450
APARTMENT occupied by *parda nishín* woman, breaking open, in order to effect an arrest, S. 48 76
APOLOGY, discharge of offender or remission of punishment on, in certain cases of contempt, S. 484 450
APPEAL under law regulating municipality of Bombay, S. 20 55
combined sentence passed on simultaneous conviction of several offences deemed a single sentence for purposes of, S. 35 65
record in summary trials in cases where there is an, S. 264 ... 277
person sentenced to death to be informed of period allowed for, S. 371 361
time to be allowed for, before confirming sentence of death, S. 376 ... 365
stay of execution of sentence of whipping pending, S. 391 383
by whom, may be presented, *ib. note* 395
limitation of periods for presenting, *ib. note* ... ... *ib.*
no appeal unless otherwise provided, S. 404 396
from order rejecting application for restoration of attached property, S. 405 ... ... *ib.*
requiring security for good behaviour, S. 406 ... 397
sentence of 2nd or 3rd class Magistrate or 2nd class Sub-divisional Magistrate acting under section 349, to lie to District Magistrate: he may transfer such appeals and again withdraw them, S. 407 396
sentence of Assistant Sessions Judge, District Magistrate, or Magistrate of 1st class, S. 408 397
to Court of Session, by whom to be heard, S. 409 398
from sentence of Court of Session, S. 410 ... ... *ib.*
Presidency Magistrate, S. 411 ... ... *ib.*
where accused has been convicted on his own plea, S. 412 ... 399
no appeal in certain petty cases, S. 413 ... ... *ib.*
from sentence of imprisonment passed by certain Courts in default of fine, when no substantive sentence of imprisonment has been passed, *ib.* ... ... *ib.*
no appeal from certain summary convictions, S. 414 ... ... *ib.*
in petty cases and in cases of summary convictions referred to in sections 413 and 414, when may be brought, S. 415... 400
and from summary convictions, may be made by European British subjects, S. 416 ... ... *ib.*
against acquittal, S. 417 ... ... *ib.*
on what matter admissible, S. 418 401
form of: to be accompanied by copy of judgment or of heads of charge to jury, S. 419 402
manner of presentation when appellant is in jail, S. 420 ... 403
facilities to be afforded to appellant in jail for drawing up, *ib. note* ... *ib.*
summary rejection of, S. 421 404
notice of, S. 422... 405
complainant cannot claim as of right to be heard on, *ib. note* ... *ib.*
powers of Appellate Court in disposing of, S. 423 ... ... *ib.*
power of enhancing sentence on, no longer exists, *ib. note* ... 406
rules with regard to judgments of subordinate Courts of, S. 424 ... 407

PAGE

APPEAL, High Court to certify its orders on, S. 425 407
rule of Calcutta High Court as regards the communication of judgments of, *ib. note* ... ... *ib.*
suspension of sentence pending, S. 426 408
against acquittal: arrest of accused, S. 427 409
taking further evidence on, S. 428 ... ... *ib.*
procedure where Judges are equally divided, S. 429 ... ... *ib.*
finality of orders on, S. 430 410
abatement of, S. 431 ... ... *ib.*
from conviction of person claiming to be dealt with as an European British subject: burden of proving Court's decision wrong to lie on accused, S. 453 423
decision that person is not an European British subject forms a ground of, *ib.* 424
from conviction in contempt-case, S. 486 451
from order for recovery of penalty of bond, to whom to lie, S. 515 ... 474
time to be allowed for, in carrying out order for disposal of property, S. 517 ... ... *ib.*
Court of, may direct order for disposal of property to be stayed, S. 420 477
from order for sale of property seized by police, S. 524 479
power of High Court to order transfer of, or to withdraw same for trial before itself, S. 526 480
power of Governor-General in Council to order transfer of: procedure of receiving Court, S. 527 484
proceedings void when Magistrate not empowered decides an, 530 ... 486
time to be allowed for, before paying prosecution expenses or compensation out of fine, S. 545 503
Judges and Magistrates not to hear, from their own judgments or orders, S. 555 509

APPEARANCE, processes to compel, of person absconding to prevent execution of warrant, proclamation requiring, S. 87 100
restoration of attached property on, S. 89 103
issue of warrant in lieu of or in addition to summons in order to compel, S. 90 104
power to take bond for, from person present in Court, S. 91 ... 105
arrest on breach of bond for, S. 92 ... ... *ib.*
by pleader, of person called upon to show cause against furnishing security for keeping the peace, S. 116 122
before Magistrate of person released after police investigation, bond for, S. 169 173
of person who has committed an offence in another jurisdiction, power to compel, S. 186 198

APPELLANT when in jail: manner of presenting appeal, S. 420 403
to have an opportunity of being heard before summary rejection of his appeal, S. 421 404
notice of appeal, when to be given to, S. 422 405
cannot claim a right to be heard in appeal, *ib. note* ... *ib.*
abatement of appeal on death of, S. 431 410

APPELLATE COURT, procedure by, in respect of absence of or error in charge, S. 232 217

PAGE

APPELLATE COURT, summary rejection of appeal by, S. 421 404
to issue notices of appeal, S. 422 405
powers of, S. 423 ... ... *ib.*
other than High Court, rules of Chapter xxvi as to judgments, to apply to judgments of, S. 424... ... 407
may order suspension of sentence and admission of prisoner to bail pending appeal, S. 426 408
may direct order for disposal of property to be stayed, S. 520 477

APPOINTMENTS made under former Acts saved, S. 2 38

APPOINTMENT of receiver for attachment of absconder's property, S. 88 ... 101
of superior officer of Police for receiving and sending on to Magistrate reports of suspected cognizable offences, S. 158 ... 160
of foreman by jury or by Court, failing his being appointed by jury, S. 280 289
of commission of inquiry in lunacy cases: duties of commission, S. 474 442
of Public Prosecutors by Government, S. 492 458
by District or Sub-divisional Magistrate, S. 492 459
by District Magistrate of Magistrate of the first class to execute commission for examination of witnesses, S. 503 ... 466

APPREHENSION of absconder, restoration of attached property on, S. 89 ... 103
of offenders under Magistrate's orders on requisition of Military authorities, S. 549 507

ARMED MEN, security for keeping the peace on conviction of assembling, S. 106... 112

ARMS AND AMMUNITION LAWS, offences against, may be inquired into and tried in Presidency-towns, S. 184 197

ARMY, power of police to arrest without warrant person suspected of being deserter from the, S. 54 78
power of commissioned officer of, to disperse assembly in absence of instructions from a Magistrate, S. 131 131
when persons in the, are exempt from serving as jurors or assessors, S. 320 317

ARREST without warrant, name of offence and case for and in which Police-officer may and may not make an, S. 4, *cl.* 42
public to assist in taking persons whom Magistrates and Police-officers are authorized to, S. 42 70
how made, S. 46 75
resisting endeavour to effect an, *ib.* ... ... *ib.*
right to cause death in effecting an, *ib.* ... ... *ib.*
search of premises in order to effect an, S. 47 76
breaking open door or window for purposes of liberation after entry into place in order to effect an, S. 49 77
search of arrested person by Police-officer making an, or to whom arrested person is made over when apprehended by a private party, S. 51 ... ... *ib.*
seizure and disposal of offensive weapons found by officer or other person making an, S. 53 78
without warrant when police may make an, S. 54 ... ... *ib.*

PAGE

ARREST of vagabonds, S. 55 83
without warrant, deputation of subordinate Police-officer to make an, S. 56 85
of committer of non-cognizable offence on refusal to give name and residence, S. 57 ... ... *ib.*
without warrant, beyond jurisdiction, S. 58 ... ... *ib.*
by private persons, S. 59 86
detention of offenders arrested by private persons if liable to, S. 58 ... *ib.*
without warrant: party to be taken before Magistrate or officer in charge of Police-station, S. 60 ... ... *ib.*
period of detention in custody in cases of, S. 61... 87
report of, to Magistrate, S. 62... 88
discharge in case of, S. 63 89
of person committing offence in Magistrate's presence, S. 64 ... 89
by Magistrate, or in his presence, S. 65 ... ... *ib.*
of prisoner who has escaped or has been rescued, S. 66 ... *ib.*
form of warrant of, S. 75 94
continuance of warrant of, *ib.* ... ... *ib.*
warrant of, security from persons apprehended under, S. 76 96
warrants of, to whom directed, S. 77 ... ... *ib.*
direction to landholders, &c., of, S. 78 97
directed to Police-officers, execution of, S. 79 ... *ib.*
notification of substance of, S. 80 98
under warrant; speedy production of prisoner before Court, on, S. 81 *ib.*
warrant of, where may be executed, S. 82 ... ... *ib.*
forwarded to Magistrate for execution outside jurisdiction, S. 83 ... ... *ib.*
directed to Police-officer for execution outside jurisdiction, S. 84 99
procedure on apprehension of person under, outside jurisdiction, S. 85 ... ... *ib.*
procedure of Magistrate on production of person under, outside jurisdiction, S. 86 100
issue of warrant in lieu of or in addition to summons, S. 90 ... 104
on breach of bond for appearance, S 92 105
warrants of, provisions in Chapter vi generally applicable to, S. 93 ... *ib.*
of person likely to commit breach of the peace, S. 108 116
of person required to show cause under section 107, 109, or 110, issue of warrant for, S. 111... 121
warrant of, issued under section 114; copy of order made under section 112 to be delivered to person apprehended under, S. 115 ... 122
of persons forming part of an assembly, use of civil or military force for, Ss. 128, 130 130
by Military Officer of persons forming part of an assembly, without instructions from a Magistrate, S. 131 131
to prevent cognizable offence S. 151 155
without warrant, power of, not extended to police investigating non-cognizable case, S. 155 157
of offender on suspicion of cognizable offence, taking measures for, S. 157 158
under warrant issued by a subordinate Magistrate, of person who has

PAGE

ARREST committed an offence beyond jurisdiction; procedure on, S. 187 ... 199
without warrant; person, not having magisterial or police powers, holding investigation prior to proceedings being taken upon a complaint, not to make an, S. 202 218
offenders attending Court may be proceeded against as though they had been arrested, S. 351 343
of person suspension or remission of whose sentence has been cancelled, S. 401 391
on appeal against acquittal, S. 427 409
of person accused of non-bailable offence who has been released on bail or on his bond, S. 497 463
issuing warrant of, when bail insufficient, S. 501 465
on application of sureties for discharge of bail-bond, S. 502 ... ... *ib.*
compensation to person groundlessly given in charge in Presidency-town, S. 552 508
See *Warrant.*

ASSAM, investiture of District Magistrates with special powers in, S. 30 ... 59
ASSAULT, security for keeping the peace on conviction of, S. 106 ... 112
and hurt, joinder of charges of, S. 235, Ill. 248
when compoundable, S. 345 336
ASSAULTING public servant, rioting and grievous hurt, joinder of charges of, S. 235, Ill. 250
member of Governor General's Council, &c., form of charge of, Sch. V, 28 614

ASSEMBLIES, UNLAWFUL, to disperse on command of Magistrate or officer in charge of Police-station, S. 127 129
dispersion of, by civil force, S. 128 130
by military force, S. 129 ... ... *ib.*
procedure in reference to dispersion of, by military force, S. 130 131
power of Military Officers to disperse, S. 131 ... *ib.*
protection against prosecution for acts done in view to dispersing, S. 132 ... ... *ib.*

ASSESSORS, warrant not to be issued in lieu of summons for attendance of, S. 90 104
trials before Court of Session to be by jury or with, S. 268 ... 280
trial by same, of several offenders in succession, S. 272 285
how chosen, S. 284 291
ceasing to attend, procedure on, S. 285 ... ... *ib.*
when Court may record finding of not guilty in a trial with, S. 289 297
view by, S. 293 300
no person to hold communication with, *ib.* ... ... *ib.*
when may be examined, S. 294 301
to attend at adjourned sitting, S. 295 302
delivery and record of opinions of, S. 309 312
Judge not bound to conform to opinions of, *ib.* ... *ib.*
persons liable to serve as, S. 319 317
exemptions from service as, S. 320... ... ... *ib.*

PAGE

ASSESSORS, special liability of persons in the Army to serve as, S. 320 ... 317
for Court of Session, list of, S. 321 318
summoning, S. 326 320
supplementary summons for, S. 327 ... ... *ib.*
form of summons to, S. 328 321
when Government or Railway servants may be excused attendance as, S. 329 ... ... *ib.*
Court of Session may excuse attendance of, S. 330 ... *ib.*
failing to attend at Court of Session, punishment of, S. 332 ... *ib.*
additional evidence for High Court in reference to sentence submitted for confirmation, not to be taken in presence of, S. 375... 364
additional evidence for Sessions Court in reference to sentence submitted for confirmation, when not to be taken in presence of, S. 380 366
additional evidence for Appellate Court not to be taken in presence of, S. 428 409
mixed set of, for trial of European British subject, S. 451 ... 432
for trial of Europeans (not being European British subjects) and Americans, S. 460 431
trial by jury of offence triable with, S. 536... 489
trial with, of offence triable by jury, *ib.* ... ... *ib.*
summoning, form of precept to Magistrate, Sch. V. 32 618
form of summons to, Sch. V. 33 ... ... *ib.*

ASSISTANT DISTRICT SUPERINTENDENT OF POLICE, powers as Special Magistrates not to be conferred on Police-officers below grade of, S. 14 50
no Police-officer below rank of, to be appointed to act as Public Prosecutor, S. 492 458

ASSISTANT SESSIONS JUDGES, appointment of, S. 9 46
may pass any sentence but one of death, or of transportation, or of imprisonment for more than seven years, S. 31 60
confirmation by Sessions Judge required to sentences of imprisonment for more than three years when passed by, *ib.* ... ... *ib.*
cases to be tried by, S. 193 205
procedure in reference to sentences submitted by, for confirmation, S. 380 366
appeal from sentences of, S. 408 ... 397
qualifications required from, in respect of jurisdiction over European British subjects, S. 444... 420

ATTACHMENT of property of person absconding to prevent execution of warrant of arrest, S. 88 101
disposal of absconder's property under, *ib.* ... ... *ib.*
fee for, *ib. note* ... ... *ib.*
restoration of absconder's property under, S. 89 103
of land, &c., occasioning dispute, S. 146 151
and sale of moveable property of jurors and assessors, S. 332 ... 322
of moveable property in view to recovering penalty of bond: issue of warrant; execution of warrant; procedure failing recovery by such warrant, S. 514 473

PAGE

ATTECHMENT of property under section 88: void when ordered by a Magistrate not empowered, S. 530 486
forms of order of attachment, Sch. V. 6, 23, 44, 47, 50, 52, 604, 612, 622, 623, 624 625
See *Distress*.

ATTEMPT to escape from lawful custody, power of police to arrest without warrant persons making an, S. 54 78
to commit any offence constitutes breach of bond for good behaviour, S. 121 125
to injure public property, Police-officer may interpose in case of, S. 152... 155
when one person is charged with committing and another with attempting an offence, they may be charged and tried either together or separately, S. 239 253
to commit certain offences, when may be tried summarily, S. 260 ... 207
authority to confer on certain Benches power to try summarily, S. 261 ... 271
to commit compoundable offences, may be compounded, S. 345 ... 336

ATTORNEY of High Court, a pleader, when authorized, S. 4 39
power of, agent for an accused person should be provided with, S. 252 *note* 263

B.

BAIL, search of arrested persons who do not furnish, S. 51 77
persons arrested by police to be taken before Magistrate or officer in charge of Police-station, subject to provisions as to, S. 60 86
report of arrests without warrant, whether parties admitted or not to, S. 62 88
committal of persons offending in presence of Magistrate, subject to provisions as to, S. 64 89
to be taken from person arrested under warrant outside jurisdiction, S. 86 100
committal of accused to custody pending trial by Court of Session or High Court, subject to provisions as to, S. 220 239
admission of accused to, on jury's verdict being submitted by Sessions Judge to High Court, S. 307 309
may be taken pending appeal, S. 426 408
against acquittal, S. 427 409
decision of reference by Presidency Magistrate to High Court, S. 432... 410
decision of reference by High Court Judge to other Judges, S. 434 411
when Revising Court may order admission of accused to, S. 438 ... 414
Court of Session may take, in cases of contempt, &c., mentioned in section 195, when committed before itself, S. 477 445
Civil or Revenue Court may take, in cases of contempt, &c., mentioned in section 196, when committed before itself, S. 478... ... 446
or bond to be taken in case of bailable offence, S. 496 463
in case of non-bailable offence: when may be taken, S. 497 ... 463
amount of bond not to be excessive: power of High Court and Court of Session to direct admission to bail or reduction of bail, S. 498 ... 464

PAGE

BAIL, conditions of bond of accused and sureties, S. 499 464
discharge from custody on execution of bond, S. 500 465
insufficient sureties; procedure, S. 501 ... ... *ib.*
procedure on application of sureties for discharge, S. 502 ... ... *ib.*
form of bond after arrest under warrant, Sch. V. 3 603
form of bond on a preliminary inquiry before a Police-officer, Sch. V. 25 613
Magistrate, Sch. V. 42 621
form of warrant of commitment of the surety of an accused person admitted to, Sch. V. 43 624

BAILABLE OFFENCE, definition of, S. 4 43
procedure by Magistrate outside jurisdiction on production of person arrested under warrant for, S. 86 ... 100
bail or bond to be taken in case of, S. 496 ... 463
Table shewing whether certain offences are bailable or not, Sch. II 517

BAZARS, military, at cantonments and stations occupied by Madras and Bombay troops, S. 1 38

BENCHES of Magistrates, appointment and powers of, S. 15 50
framing of rules for guidance of mufassal, S. 16 52
framing of rules regarding constitution of mufassal, for conducting trials, *ib.* 52
subordination of mufassal, to District Magistrate, S. 17 ... 53
certain mufassal, to Sub-divisional Magistrate, subject to general control of District Magistrate, *ib.* ... ... *ib.*
mufassal, not subordinate to Sessions Judge, *ib.* ... ... *ib.*
Presidency Magistrates may sit together as, S. 18 54
in Presidency-towns, framing of rules for guidance of, S. 21 ... 55
warrants issued by, may be signed and sealed by any member of the Bench, S. 75 94
having second or third class powers, power to invest, with power to try certain offences summarily, S. 261 274
Local Government may allow clerk to prepare records or judgments of, in summary trials, S. 265 279

BENCH of Judges in High Court disagreeing as to case submitted for confirmation of sentence; procedure, S. 378 366

BINDING-OVER to keep the peace or to be of good behaviour; contents of bond, S. 121 125
supplementary witnesses summoned after commitment, S. 219 239
complainant and witnesses on trial of European British subject before Court of Session to appear before High Court, S. 449 422

BODY, marks of injury on, to be described in Police-officer's report on sudden or unnatural death, S. 174 178
may be sent by police to medical officer for examination, S. 174 ... 179
power to disinter, S. 176 191
certain High Courts may direct that body of defendant be brought in on Sheriff's return of *cepi corpus*, S. 491 457

BOMBAY town, Commissioner of Police, and the police in, S. 1 ... 38
Presidency, military bazars at cantonments and stations occupied by troops of, *ib.* ... ... *ib.*
village Police-officers in, *ib.* ... ... *ib.*

PAGE

BOMBAY High Court, local limits of certain jurisdiction of, called "Presidency-town," S. 4 40
a "High Court" as regards proceedings against European British subjects, *ib.* 41
town, Bombay Presidency Magistrates to exercise jurisdiction held by Bombay Court of Petty Sessions in, S. 20 55
town, appointment of Justices of the Peace for, S. 23 ... 56
investigations into sudden or unnatural deaths in, may be made by heads of villages, S. 174 178

BOND for appearance of person refusing to give name and residence, S. 57 ... 85
discharge of persons arrested by police, on their giving a, S. 63 ... 89
of person arrested under warrant, S. 76 96
in another jurisdiction, transmission to Court of, S 86 100
for appearance of person present in Court, S. 91 105
arrest on breach of, S. 92 ... ... *ib.*
for keeping the peace on conviction, order for: bond to be void if conviction is subsequently set aside, S. 106 ... 112
order for showing cause against execution of, S. 107 114
for good behaviour of vagrants, &c.; showing cause against execution of, S. 109 116
of habitual offenders; showing cause against execution of, S. 110 117
order for showing cause under section 107, 109 or 110 to state amount of, S. 112 119
for keeping the peace, power to dispense with attendance of person called upon to show cause against executing, S. 116 122
or for good behaviour, passing, after inquiry, order for execution of, S. 118 ... 124
or for good behaviour; amount to be reasonable, *ib.* ... ... *ib.*
or for good behaviour to be executed only by sureties, when Principal is a minor, *ib.* ... *ib.*
or for good behaviour, contents of, S. 121 ... 125
or for good behaviour, what constitutes breach of, *ib.* ... ... *ib.*
for peaceable conduct or for good behaviour; cancellation of, Ss. 125, 126 ... 128
fresh security for unexpired term of, S. 126 ... *ib.*
for appearance before Magistrate of person released after police investigation, S. 169 173
of complainant and witnesses at police investigation to appear before Magistrate, S. 170 ... ... *ib.*
no complainant or witness to be required to give security other than his own, S. 171 175
complainant or witness refusing to attend or to execute, may be forwarded in custody, *ib.* ... ... *ib.*

PAGE

BOND, report of police investigation to state whether accused has been released on his, S. 173 177
Magistrate to pass orders as to discharge or otherwise in case of accused being released on his, after police investigation, *ib.* 178
for attendance to be taken from complainants and witnesses in cases committed to Court of Session or High Court, S. 217 ... 233
Court issuing distress-warrant may take, for offender's appearance, S. 388 383
release of prisoner on his own, pending appeal, S. 426 408
when Revising Court may order release of accused on his own, S. 438... 414
without sureties, or bail, to be taken in case of bailable offence, S. 496... 463
when to be taken in case of non-bailable offence, S. 497 ... ... *ib.*
amount of, not to be excessive, S. 498 464
of accused and sureties: conditions of, S. 499 ... ... *ib.*
release of accused on execution of, S. 500 465
application of sureties for discharge, S. 502 ... ... *ib.*
other than bonds for good behaviour: deposit instead of recognizance, S. 513 472
procedure on forfeiture of, S. 514... 473
Court may remit portion of penalty of, *ib.* ... ... *ib.*
appeals from, and revision of, orders for recovery of penalty of, S. 515 474
to appear before High Court or Court of Session: such Courts may direct Magistrate to recover penalty, S. 516 ... ... *ib.*
of accused for payment of prosecutor's costs on transfer of case, S. 526 489
and bail-bond after arrest under warrant, form of, Sch. V. 3 603
to keep the peace, form of, Sch. V, 10 607
for good behaviour, form of, Sch. V, 11 ... ... *ib.*
and bail-bond on a preliminary inquiry before a Police-officer, form of, Sch. V. 25 613
and bail-bond on a preliminary inquiry before a Magistrate, form of, Sch. V. 42 621
to prosecute or give evidence, form of, Sch. V. 26 613
form of warrant of attachment to enforce, Sch. V. 44 622
form of notice to security on breach of, Sch. V. 45 623
for good behaviour, form of notice to surety on forfeiture on, Sch. V. 46 *ib.*
to keep the peace, form of notice to Principal on foreiture of, Sch. V. 49 624
form of warrant to attach property of Principal on breach of, Sch. V. 50 ... ... *ib.*
form of warrant of imprisionment on breach of, Sch. V. 51 625
for good behaviour, form of warrant of attachment and sale on forfeiture of, Sch. V. 52 ... ... *ib.*
for good behaviour, form of warrant of imprisonment on forfeiture of, Sch. V. 53 626

BOOK to be kept by officer in charge of Police-station; entry in, of information concerning commission of cognizable and non-cognizable offences, Ss. 154, 155 ... ... 156, 157

BOOKS, power of certain High Courts to make rules for subordinate Courts in reference to keeping, S. 553 508

PAGE

BOUNDARIES of tangible immoveable property: procedure on receipt of information as to dispute concerning, which is likely to cause breach of peace, S. 145 146

BREACH, see *Bond; Contract; Criminal Breach of Contracts of Service; Criminal Breach of Trust; Peace.*

BRIBE, accepting; form of charge, Sch. V, 28 614

BRITISH BURMA, investiture of District Magistrate with special powers in, S. 30 59

BUILDING, conditional order for preventing or stopping construction of; or for removing, repairing or supporting, S. 133 132

removed by Magistrate's order; sale of, in view to recovering costs of removal, S 140 140

BUOY used for navigation; preventing removal of, or injury to, S. 152 ... 155

C.

CALCUTTA, Commissioner of Police, and the police in, S. 1 38

appointment of Justices of the Peace for, S. 23 56

See *Fort William.*

CALENDAR of prisoners, form of, in Punjab, S. 218 *note* 237

CANAL, public to assist Magistrates and police in preventing injury to any, S. 42 70

CANTONMENTS, military bazars at, and at stations, occupied by Madras and Bombay troops, S. 1... 38

CASES, conferment of powers on Special Magistrates in respect of certain, S. 14 50

on Benches of Magistrates in respect of certain, S. 15 ... ... *ib.*

to be tried by Benches of Magistrates, framing of rules regarding, S. 16 52

power to order trial of, in any Sessions Division, S. 178 ... 192

transfer of, by District or Sub-divisional Magistrate, S. 192 203

by Magistrate of the first class specially empowered, *ib.* ... *ib.*

to be tried by Additional and Joint Sessions Judges, S. 193 205

by Assistant Sessions Judges, *ib.* ... ... *ib.*

for prosecution, how to be opened, S 286 292

summing up, S 289 297

for defence, opening; summing up, S. 290 299

CASE not to be tried by Magistrate whose tender of pardon has been accepted, S. 337 323

presiding Judge or Magistrate may exclude any person from Court during inquiry into or trial of any particular, S. 352 344

See *Cognizable Case; Criminal Case; Non-cognizable Case; Sessions-case; Summons-case; Warrant-case.*

CAUTION not to be given against making voluntary confession at police investigation, S. 163 164

CENTRAL PROVINCES, investiture of District Magistrate with special powers in, S. 30 59

CEPI CORPUS, certain High Courts may direct that body of defendant be brought in on Sheriff's return of, S. 491 457

PAGE

CERTIFICATE of High Court's decision on appeal, when to be sent through District Magistrate, S. 425 407
of officer appointed by Court that accused who has been insane is capable of making his defence, receivable in evidence, S. 467 436
of Inspector General of Prisons or visitors of Lunatic Asylum that lunatic prisoner is capable of making his defence, procedure on: such certificate receivable as evidence, S. 473 ... 441
of Inspector General of Prisons or visitors of Lunatic Asylum that lunatic prisoner might with safety be discharged, S. 474 442
of Inspecting Officer in case of lunatic delivered to care of relative, how dealt with, S. 475 ... ... *ib.*
of officer in charge of jail, previous conviction may be proved by, S. 511 471

CERTIFYING examination of accused, S. 364 354
to High Court result of additional evidence taken in reference to sentence submitted for confirmation, S. 375 364
to Sessions Court ditto ditto, S. 380 366
manner of execution of warrant, S. 400 390
orders of High Court on appeal, S. 425 407
additional evidence to Appellate Court, S. 428 409
order of High Court in revision, S. 442 418

CHARACTER regard to be had to, in preparing list of special jurors, S. 313 ... 314

CHARGE of offence committed in Native State, fitness of inquiry into, to be certified by Political Agent, S. 188 199
of offences against public justice, &c., amendment of, S. 195 ... 207
when to be framed in inquiries, S. 210 228
framed at inquiry to be read and explained to accused, and copy to be given him, if he so requires, free of cost, S. 210 229
two persons not to be joined in one, of indictment, S. 213 *note* ... 231
to be forwarded on commitment to Court of Session or High Court, S. 218 234
form of, S 221 240
manner of committing offence when to be stated in, S. 223 243
words in, taken in sense of law under which offence in punishable, S. 224 ... ... *ib.*
effect of error or omission in, S. 225 244
procedure on commitment without, or with imperfect or erroneous, S. 226 245
may be altered by any Court before judgment, S. 227 ... *ib.*
alterations in, to be read and explained to accused, *ib.* ... ... *ib.*
when trial may proceed immediately after altering or framing new, S. 228 ... ... *ib.*
when new trial may be directed, or trial suspended, on altering or framing new, S 229 246
stay of proceedings on altering or framing new, if prosecution of offence in altered charge require previous sanction, S. 230 ... *ib.*
re-call of witnesses on alteration of, S. 231 ... ... *ib.*
procedure by Appellate Court or High Court in confirmation or revision in respect of absence of or error in, S. 232 247

CHARGES, separate, to be made for distinct offences, S. 233 ... ... *ib.*
to be tried separately, except in certain cases, S. 233 ... *ib.*

PAGE

Three offences of same kind within a year may be charged together, S. 234 248
of offences connected together by one set of acts may be made separately and tried together, S. 235 ... ... *ib.*
of offences falling within two definitions may be made under both and tried together, *ib.* 249
of acts severally constituting more than one offence but collectively forming a different offence may be made for each offence and tried together, *ib.* ... ... *ib.*
in cases of doubt as to which of several offences can be proved, S. 236 251
when facts appear to cover more offences than one, and it is doubtful which offence should be charged, S. 237 252
when offence proved is included in offence charged, S. 238 ... *ib.*
in cases of persons accused jointly, S. 239 253
withdrawal of remaining, on conviction of one of several, S. 240 ... 254

CHARGE not to be framed in trials of summons-cases, S. 242 255
to be framed in warrant-cases when offence appears proved, S. 254... 264
in warrant-cases, to be read and explained to accused, S. 255 ... 265
discharge of accused in warrant-cases before framing of, S. 259 ... 269
need not be framed in summary trials in cases where no appeal lies, S. 263 275
to be read and explained to accused in trials before High Courts and Courts of Session, S. 271 284
unsustainable, entry on: effect of entry, S. 273 286
jury to return verdict on each, S. 303 307
entry on, when Judge considers accused should not be re-tried after discharge of jury: its effect, S. 308 312
High Court may order new trial on same or amended, when sentence is submitted for confirmation, S. 376 365
Sessions Judge ditto ditto, S. 380 366
in respect of previous acquittals or convictions, S. 403 ... 392
effect of omission to frame: Court of appeal or revision may order a charge to be framed, S. 535 489
finding, sentence or order when reversible by reason of error, omission or irregularity in, S. 537 490

CHARGES, forms of, Sch. V, 28 614
See *Criminal Charge; False Charge.*

CHARGE OF JUDGE TO JURY, when to be given: what to contain, S. 297 ... 302
Court of Session to record heads of, S. 367 ... 358
copy of heads of, to be given to accused free of cost, S. 371 361
copy of heads of, to accompany appeal, S. 419 ... 402
finding, sentence or order when reversible by reason of misdirection in, S. 537 ... 490
copy of, to be furnished when asked for: Court may supply it free of cost, S. 548 505

CHEATING, under section 417, Penal Code; when compoundable, S. 345 ... 336
charges of, S. 221 240
charge of, in case where it is doubtful what offence has been committed, S. 236 251

PAGE

CHEMICAL EXAMINER OR ASSISTANT CHEMICAL EXAMINER TO GOVERNMENT; report of, may be used as evidence, S. 510 471
CHIEF COURT OF THE PANJAB, a "High Court", as regards proceedings against European British subjects, S. 4 ... 41
included in "High Court" as used in Chapter xxiii, S. 266 279
record of evidence in, S. 365 357
CHIEF JUSTICE, definition of, S. 4 41
to appoint time of holding High Court sittings, S. 334 ... 322
CHIEF MAGISTRATE, Benches in Presidency-towns, subject to rules framed by, S 18 54
CHIEF PRESIDENCY MAGISTRATE, appointment of, *ib.* ... ... *ib.*
in Bombay, appeals under law regulating Bombay Municipality, to lie to, S. 20 ... 55
general powers of, and power to make rules, S 21 ... ... *ib.*
CHILD, any legitimate, of certain persons, a "European British subject," S. 4 43
CIVIL COURT, orders under section 133 not to be called in question by, S. 133 132
procedure by, in cases of contempt, &c., mentioned in section 195, S. 476 443
power of to complete investigation and commit to Sessions Court, in above cases: to exercise powers of a Magistrate in such investigation, S. 478 446
commitment by; procedure, S. 479 447
may take cognizance of certain cases of contempt, S. 480 ... *ib.*
Registrar or Sub-Registrar to be deemed a, S. 483 449
CIVIL FORCE, use of, to disperse assembly, S. 128 130
CIVIL PROCEDURE CODE, Chapter xxxvi; powers, duties and liabilities of receivers appointed for attachment of property of absconders, same as those of receivers appointed under, S. 88 102
exemption from personal appearance in Court granted under, carries exemption from liability to serve as juror or assessor, S. 320 ... 317
CIVIL SUIT, compensation awarded for frivolous or vexatious complaint to be taken into account in any subsequent, S. 250 259
order for restoration of immoveable property not to prejudice rights which may be established by, S. 522 477
CIVIL SURGEON, police may forward corpse to, for examination, S. 174 ... 178
examination of lunatic accused by, S. 464 433
deposition of, may be given in evidence, or Court may summon him, S. 509 469
CLAIMS as to possession, order to parties to dispute concerning land, &c., to put in statements of, S. 145 146
of parties, Magistrate to decide who is in possession of land, &c., occasioning dispute, without reference to merits of, S. *ib.* ... *ib.*
CLERK, Local Government may allow, to prepare records or judgments of Benches in summary trials, S. 265 279
CLERK OF THE CROWN, definition of, S. 4 40
duties of, S. 4 *note* 41

PAGE

CLERK OF THE CROWN, accused may give to, an additional list of witnesses for his trial, S. 211 229
Magistrate may leave summoning of defence witnesses to, S. 216 232
charge, record of inquiry and things to be produced in evidence to be sent to, on commitment to High Court, S. 218... 234
power of, to frame charge after commitment or to alter existing charge, S. 226 245
to prepare lists of common and special jurors: to have full discretion in so doing, S. 313 314
published lists of jurors for High Courts to be signed by, S. 314 315
swearing and affirming affidavits and affirmations before, S. 539 491

CLOSED PLACE persons in charge to allow search in, S. 102 111

COGNIZABLE CASE, definition of, S. 4 42
investigation of, by police, S. 156 158
proceedings of police investigating, not to be called in question, *ib.* ... ... *ib.*
suspected, investigation into: when investigation may be dispensed with, S. 157 ... ... *ib.*
disposal by Magistrate of, on receipt of police report, S. 159 160

COGNIZABLE OFFENCE, definition of, S. 4 42
power of police to arrest without warrant persons concerned in any, S. 54 78
power of police, to arrest without warrant persons concealing their presence with a view to committing a, S. 55 83
police to prevent, S. 149 151
information of design to commit, S. 150 ... ... *ib.*
arrest on information of design to commit, S. 151 ... 155
treatment by police of information concerning commission of, S. 154 156
procedure by police on suspicion of, S. 157 ... 158
Table showing whether certain offences are cognizable by police or not, Sch. II, ... 517

COIN, counterfeit, search of place suspected to contain, or materials for counterfeiting, S. 98 108
counterfeit, having in possession; charge of, S. 225, Ill. ... 244
trial of persons previously convicted of certain offences relating to, S. 348 340
counterfeit; knowingly delivering or attempting to deliver as genuine: forms of charges, Sch. V. 28 615

COLLECTORS of Revenue or Customs, exempted from serving as jurors or assessors, S. 320 317

COLONIES, certain persons naturalized, &c., in certain, "European British subjects," S. 4 43

PAGE

COMMANDING OFFICER, duty of, on requisition of Magistrate for dispersion of assembly, S. 130 131
to be communicated with and his objections allowed, in respect of summoning military jurors, S. 317 ... 316
COMMISSION issued by a High Court, Justices of the Peace appointed under, to continue to hold office, S. 24 ... 57
of inquiry in cases of lunacy, S. 474 442
COMMISSIONS FOR THE EXAMINATION OF WITNESSES
issue of, by Presidency Magistrate, District Magistrate, Court of Session or High Court: to whom directed; duty of receiving officer, S. 503 466
when witnesses are in Presidency-town: saving of High Court's power to issue commissions under 39 and 40 Vic., Cap. 46, s. 3, S. 504 467
parties may forward interrogatories for examination of witness, and may themselves examine, cross-examine and re-examine such witness, S. 505 468
subordinate Magistrate may apply to District Magistrate for issue of, S. 506 ... ... *ib.*
to be returned after execution: to be open to inspection of parties; may be read in evidence; to form part of the record, S. 507 469
stay of inquiry or trial pending execution and return of, S. 508 *ib.*
COMMISSIONERS, acting under commission from Governor General in Council, certain High Courts may direct production of prisoner before, S. 491 457
See *Deputy Commissioner.*
COMMISSIONER OF POLICE, warrant of arrest for execution outside jurisdiction forwarded to, S. 83 98
outside jurisdiction, when person arrested under warrant to be taken before, S. 85 ... 99
outside jurisdiction, procedure of, when person arrested under warrant is taken before him, S. 86... 100
COMMITMENT, powers of High Court upon, S. 28 *note* 58
to High Court, by whom may be made, *ib. note* ... *ib.*
of accused by Magistrate, necessary to cognizance of an offence being taken by Court of Session, S. 193 205
High Court may take cognizance of any offence upon, S. 194 ... 206
to Court of Session and High Court, Magistrates authorized in respect of, S. 206 223
not to be made to High Court when accused is triable by Court of Session, except as specially provided, *ib.* ... ... *ib.*
to Court of Session or High Court, charge to be framed on, S. 210 228
of person charged in mufassal jointly with European British subject, when to be made to High Court, S. 214 231
to Court of Session or High Court, quashing, S. 215 ... 232
if in the opinion of Sessions Judge, illegal, *ib. note* ... ... *ib.*
of accused, summons to defence witnesses on, S. 216 ... *ib.*
to Court of Session or High Court, when to be notified, S. 218 234

PAGE

COMMITMENT tender of pardon after, S. 338 327
of person who has accepted tender of pardon, S. 339 ... 328
procedure when after commencement of inquiry or trial Magistrate finds case should be committed, S. 347 339
Court hearing appeal against acquittal may direct, S. 423 ... 405
power to order, when Court of Session or District Magistrate considers discharge improper: accused in such case to have an opportunity of showing cause against commitment, S. 436 412
of European British subject when to be to Court of Session and when to High Court, S. 447 421
validity of, when person who is not an European British subject is dealt with as such, S. 455 426
when Civil or Revenue Court may make, S. 478 ... 446
by Civil or Revenue Court; procedure, S. 479 447
warrant of, previous conviction may be proved by production of, S. 511 471
irregular, when may be validated, S. 532 487
on failure to find security for keeping the peace; or for good behaviour; forms of warrant, Sch. V, 13, 14 608
notice by Magistrate to Government Pleader, form of, Sch. V. 27 614
on sentence of imprisonment or fine if passed by a Magistrate; forms of warrant, Sch. V. 29 616
under sentence of death; form of warrant, Sch. V, 34 ... 618
in certain cases of contempt when a fine is imposed; form of warrant, Sch. V. 38 620
form of warrant of commitment for refusal to answer, where there is no fine, Sch. V. 39 ... ... *ib.*
of the surety of an accused person admitted to bail; form of warrant, Sch. V. 48 624

COMPENSATION for frivolous or vexatious complaints, award and recovery of, S. 250 259
not allowed when complaint withdrawn; can be award only in summons-cases and where accused not called upon for his defence, *ib. note* ... ... *ib.*
power to order, out of fine, S. 545 503
payments for, to be taken into account in subsequent civil suit, S. 546 504
to person groundlessly given in charge in Presidency-town: award of; recoverable as fine; penalty in default of payment, S. 552 508

COMPLAINANT, to be bound to appear when case is sent up by police, S. 170... 173
not to be required to accompany Police-officer to Court, S. 171 175
not to be subjected to unnecessary restraint, *ib.* ... *ib.*
not to be required to give security other than his own bond, *ib.* ... ... *ib.*
recusant, may be forwarded to Court in custody, *ib.* ... *ib.*
to be examined upon oath, and to sign his examination, S. 200 215
examination of, when may be dispensed with by Magistrate transferring case, *ib.* ... ... *ib.*

PAGE

COMPLAINANT in case committed to Court of Session or High Court, Magistrate to take bond for appearance of, S. 217 233
in case committed to Court of Session or High Court, detention of, on refusal to attend or to execute recognizance, *ib.* ... *ib.*
Magistrate trying summons-case may issue process for further evidence on application of, S. 244 256
procedure in summons-case on non-appearance of, S. 247 ... 258
discharge of accused in warrant-cases on absence of, S. 259 ... 269
name of, to be entered in record of summary trial, S. 263 ... 275
to be recorded in Presidency Magistrate's judgment, S. 370 361
binding over, on trial of European British subject before Court of Session to appear before High Court, S. 449 ... 492
payment of expenses of, S. 544 495
COMPLAINT, definition of, S. 4 39
of a cognizable offence, power of police to arrest without warrant persons implicated by, S. 54 78
made to police of commission of non-cognizable offence, record of substance of, S. 155 157
of public servant or Court concerned, cognizance of certain offences not to be taken except upon, S 195... 207
by order or under authority of Governor General in Council, &c., cognizance of offences against the State not to be taken except upon, S. 196 210
by aggreved party, necessary to prosecutions for certain offences, S. 198 214
by or on behalf of injured husband, necessary to prosecution for adultery, S. 199 ... ... *ib.*
procedure by Magistrate taking cognizance upon, S. 200 ... 215
Presidency Magistrate may require, to be presented in writing, S. 200 ... ... *ib.*
when to be returned for presentation to proper tribunal, S. 201 217
power to direct local investigation before proceeding upon a, S. 202 ... ... *ib.*
when may be dismissed, S. 203 218
finding in summons-cases not limited by, S. 246 ... 258
withdrawal of, in summons-cases, S. 248... 259
frivolous or vexatious, award of compensation for, S 250 ... *ib.*
date of, to be entered in record of summary trial, S 263 ... 275
dismissal of, is not an acquittal for purposes of section 403 (retrial after conviction or acquittal), S. 403 ... 392
power of Court of Session or District Magistrate to direct further inquiry, S 437 414
finding, sentence or order, when reversible by reason of error, omission or irregularity in, S. 537 490
COMPOUNDING offences: list of offences; by whom compoundable, effect of composition, S. 345 336
CONCEALMENT of stolen property, assisting in, when may be tried summarily, S. 260 270
CONFESSION, no inducement for, to be offered during police investigation, S. 163 164

PAGE

CONFESSION, voluntary, at police investigation, not to be prevented, S. 163 ... 164
made before inquiry or trial, record of, S. 164 167
record of: procedure when provisions of section 164 or 364 have not been fully complied with, S. 533 488

CONFIRMATION of High Court required to sentence of death passed by Sessions, Additional Sessions or Joint Sessions Judges, S. 31 60
of Sessions Judge required to Assistant Sessions Judges' sentences of imprisonment for more than three years, *ib.* *ib.*
of Sessions Judge required to sentences of imprisonment for more than three years passed by Courts of District Magistrates specially empowered, S. 34 64
combined sentence passed on simultaneous conviction of several offences deemed a single sentence for purpose of, S. 35 65
by High Court necessary to execution of sentence of death, S. 374 364
of sentence of death, High Court's power of, S. 376 ... 365
time for appeal to be allowed before passing order, *ib.* 365
to be signed by two Judges, S. 377 ... *ib.*
copy of order to be sent to Court of Session, S. 379 366
by Sessions Judge, submission of sentences for, S. 380 ... *ib.*
Court, case subject to, to be disposed of by it before appeal is presented to High Court, S. 408 397
Court of, may direct order for disposal of property to be stayed, S. 520... 477

CONSTABLE, certain officers above rank of, when considered "Officers in charge of Police-stations," S. 4 42
authorization of Police-officer above rank of, to search place suspected to contain stolen property, forged documents, &c., S. 98 108

CONSTRUCTION of building, conditional order for preventing or stopping, S. 133 132
of documents given in evidence in jury trials, to be decided by Judge, S. 298 302

CONTEMPT of lawful authority of public servant, previous sanction necessary to prosecution for, S. 195 207
jurors failing to attend at High Court, to be deemed guilty of, S. 318 316
power of Civil, Criminal or Revenue Courts to take cognizance of certain cases of, S. 480 447
procedure where Court considers that case should not be dealt with under section 480, S. 482 449
witness refusing to answer or to produce document, when to be deemed guilty of, S. 485 450
appeals from convictions in contempt-cases, S. 486 451
Judge or Magistrate not to try certain cases of, when committed before himself, except in certain cases, S. 487 452
form of warrant of commitment in certain cases of contempt when a fine is imposed, Sch. V, 39 620

PAGE

CONTRACT, breach of, cognizance not to be taken of, except upon complaint made by aggrieved person, S. 198 214
no person to be convicted under section 238 of, unless complaint has been made by an aggrieved party, S. 238 252

CONVICT, presence of, may be dispensed with when additional evidence for High Court or Sessions Court is taken in reference to sentence submitted for confirmation, SS. 375, 380 ... 364, 366

CONVICTION, previous, when to be mentioned in charge, S. 221 240
Court may, at any time before sentence, add to charge a statement of, *ib.* 241
in summons-cases, accused to be asked to show cause against: when to be convicted on his own admission after having an opportunity of showing cause against, Ss. 242, 243 ... 255, 256
duty of Magistrates of 2nd and 3rd class after, S. 245, *note* .. 257
in summons-cases not limited by complaint or summons, S. 246 258
on accused's plea in warrant-cases, S. 255... 265
brief statement of reasons for, to be entered in record of summary trial, S. 263 275
on accused's plea in trials before High Courts and Courts of Session, S. 271 284
on evidence partly recorded by one Magistrate and partly by another, may be set aside, S. 350 342
judgment of, to state offence and section, S. 367 358
under Penal Code; judgment in alternative, *ib.* ... *ib.*
of an offence punishable with death: judgment to state reason when that punishment is not awarded, *ib.* ... ... *ib.*
reasons for, when to be stated in Presidency Magistrate's judgment, S. 370 361
High Court may annul, and convict accused of another offence, when sentence is submitted for confirmation, S. 376 365
Sessions Judge ditto ditto, S. 380 366
powers of Appellate Court hearing appeal against, S. 423 ... 405
previous, how proved, S 511 471
distress not illegal nor distrainer a trespasser because of defect of form in, S. 538 491

COORG, investiture of District Magistrate with special powers in, S. 30 ... 59

COPY of order under section 112 to accompany summons or warrant issued under section 114, S. 115 122
of bond for appearance of complainant and witnesses, to be given to one of the parties, S. 170 174
of depositions and exhibits; power to direct to be received in evidence at inquiry or trial of offence committed out of British India, S. 189... 200
of charge to be given to accused free of cost, on commitment, S. 210 ... 228
of evidence of supplementary witness taken by mufassal Magistrate, to be given to accused free of cost, S. 219 239
of judgment or of heads of charge to jury, to be given to accused, S 371 361
of finding and sentence of Court of Session, to be sent to District Magistrate, S. 373 363
of order in case submitted to High Court for confirmation of sentence, to be sent to Court of Session, S. 379 366

PAGE

COPY of judgment or of heads of charge to jury, to accompany appeal, S. 419 402
of grounds of appeal, when to be given to Public Prosecutor, S. 422 ... 405
of High Court's order on reference by Presidency Magistrate, to be sent to the Magistrate, S. 433 411
of order of maintenance, to be be given to person in whose favour it is made, 490 457
of sentence or order, previous conviction or acquittal may be proved by, S. 511 471
of grounds of application for transfer of case, to be given to Public Prosecutor, S. 526 481
of proceedings to be furnished when asked for : Court may supply it free of cost, S. 548 505
COSTS of attachment, restoration of property to absconder after deduction of, S. 89 103
of removing nuisance, recovery of, S. 140 140
of reference by Presidency Magistrate, High Court may pass order as to payment of, S 433 411
of prosecutor, payment by accused of, when case is transferred, S. 526... 481
COUNTERFEIT, see *Coin ; Seals ; Stamps.*
COURT, the highest, of criminal appeal or revision, a "High Court", except in certain cases, S. 4 41
COURTS constituted under other laws, Criminal Courts under Code, S. 6 ... 44
COURT of Petty Sessions, Bombay. jurisdiction now exercised by, S. 20 ... 55
COURTS of Presidency Magistrates, framing of rules for regulating practice, &c., of, S. 21 ... ... *ib.*
which may try offences under Penal Code, S. 28 58
other laws, S. 29 59
of Magistrates, sentences which may be passed by different, S. 32 ... 61
may pass combined sentences, *ib.* ... ... *ib.*
award of imprisonment by, in default of payment of fine, S. 33 62
of District Magistrates specially empowered, higher powers of, S. 34 64
COURT, sentence in cases of conviction of several offences at one trial before same, S. 35 65
not necessarily to send offender to higher Court when charged with several offences. S. 35 ... ... *ib.*
signature and sealing of summons by presiding officer of, S. 68 ... 90
service of summons by officer of, *ib.* ... ... *ib.*
direction by, for taking security from person arrested under warrant, S. 76 96
other than that of Presidency Magistrate. discretion of, as to direction of warrants of arrest, S. 77 ... ... *ib.*
power of, to order attachment of property of absconder, S. 88 ... 101
discretion of, as to attaching and selling property of absconder, *ib.* ... 102
power of, to issue warrant in lieu of or in addition to summons, S. 90 104
presiding officer of, to take bond for appearance of person present in, S. 91 105
power of, to issue summons to produce document or other thing, S. 94 106
issue of search-warrant at discretion of, S. 96 107
power of, to restrict search-warrant, S. 97 108

PAGE

COURT, power of, to impound document or thing produced, S. 104 ... 112
procedure with order for showing cause under section 107, 109 or 110, when party present in, S. 113 121
issue of summons or warrant on order to show cause under section 107, 109 or 110, when party not present in, S. 114 ... ... *ib.*
inquiry as to truth of information after reading or explaining order under section 112, when party present in, S. 117 122
COURTS, subordination of, in respect of giving sanction for prosecutions for offences against public justice, &c., S. 195 207
COURT for trial of Judge or public servant may be specified by Government, S. 197 210
COURTS so declared by Local Government, to be "High Courts" for purposes of Chapter xxiii, S. 266 279
COURT, exemption from personal appearance in, carries exemption from liability to serve as juror or assessor, S. 320 317
may at any time examine accused, S. 342 330
to draw its inference from accused's giving false answers or refusing to answer, *ib.* 330
detention of offenders attending, S. 351... 343
to be open: but presiding Judge or Magistrate may exclude any person, S. 352 344
not to alter its judgment, S. 369 360
competent to try accused or to convict him for trial may record evidence in his absence, S. 512 472
may remit portion of penalty of forfeited bond, S. 514 ... 473
of appeal, confirmation, reference or revision may direct order for disposal of property to be stayed, S. 520 477
not empowered under sections 177 to 184, High Court may order case to be inquired into or tried by, S 526 480
COURTS, excepting chartered High Courts: power to decide language of, S. 556 512
See *Appellate Court; Chief Court; Chief Court of the Panjab; Civil Court; Court of Session; Criminal Court; High Court; Revenue Court; Subordinate Courts.*
COURT-MARTIAL, certain High Courts may direct production of prisoner before, S. 491 457
delivery to Military authorities of persons liable to be tried by, S. 549 507
COURTS OF SESSION, one class of Criminal Courts, S. 6 44
establishment of, and appointment of Judges for, S. 9 ... 46
appointment of Additional, Joint, and Assistant Sessions Judges for, *ib.* ... ... *ib.*
may try any offence under Penal Code, S. 28 58
procedure as to production of document in custody of Postal or Telegraph Department, when required by, S. 95 106
power of, to require security for keeping the peace on conviction, S. 106 112
procedure of, on apprehension of breach of the peace, S. 108 116
proceedings in case of failure to comply with order for security under section 106 or 118, when to be laid before, S. 123 126

PAGE

COURTS OF SESSION, discretion of, as to kind of imprisonment awardable on failure to give security for good behaviour, S. 123 ... 127
release by, of person imprisoned for failure to give security, S. 124 ... ... *ib.*
cognizance of offences by, S. 193 205
Magistrates who may commit to, S. 206 223
persons triable by, not to be committed to High Court, except as specially provided, *ib.* ... ... *ib.*
procedure to be adopted in inquiries into cases triable by, S. 207 ... ... *ib.*
order of commitment to, when to be made, S. 213 ... 229
bond for securing attendance of complainant and witnesses at, S. 217... 233
detention of complainants and witnesses refusing to attend at, *ib.* ... ... *ib.*
charge, record of inquiry and things to be produced in evidence, to be forwarded, on commitment to, S. 218... 234
power of, to frame charge after commitment, or to alter existing charge, S. 226 245
trials before, to be by jury or with assessors, S. 268 ... 280
Local Government may order trials before, to be by jury, S. 269 ... ... *ib.*
offences not triable by jury, when to be so tried before, *ib.* ... ... *ib.*
trials before, to be conducted by Public Prosecutor, S. 270 281
procedure when Magistrate finds case should be tried by, S. 347 339
offenders against coinage, stamp-law and property when to be committed to, S. 348 340
record of evidence in, S. 356 346
to record heads of charge to jury, S. 367 358
to send copy of its judgment to District Magistrate, S. 373 363
to submit sentence of death to High Court for confirmation: copy of High Court's order to be sent to Court of Session, Ss. 374, 379 ... ... 364, 366
certifying evidence to, S. 380 366
when to issue warrant for execution of sentence of death, S. 381 367
appeals when to lie to, S. 408 397
European British subject may appeal either to High Court or, S. 408 398
appeals to, by whom to be heard, S. 409 ... ... *ib.*
appeal from sentence of, S. 410 ... ... *ib.*
conviction by, on accused's own plea, S. 412 399.
no appeal from certain sentences by, except in case of combination of punishments, Ss. 413, 415 ... 399, 400
taking additional evidence for Appellate Court, S. 428 ... 409
power of, to call for records of inferior Courts, S. 435 ... 411
power to order commitment to, when such Court or a District Magistrate considers discharge improper, S. 436 412

PAGE

COURTS OF SESSION, revising proceedings, power of, to direct inquiry by lower Court, *ib.* 412
power of, to direct inquiry by District or any subordinate Magistrate, S. 437 414
revising proceedings may report case to High Court, and thereupon suspend sentence and release accused, S. 438 *ib.*
qualifications required from Judges in, in respect of jurisdiction over European British subjects, S. 444 .. 420
commitment of European British subject, when to be made to, S. 447 421
sentences which may be passed on European British subject by procedure where Judge finds his power inadequate, S. 449 422
procedure by, on accused claiming to be dealt with as an European British subject, S. 453 423
procedure by, in case of accused being lunatic: trial of fact of unsoundness to be deemed part of the trial before the Court, S. 465... 434
accused sane at time of inquiry or trial by Magistrate but not when he committed offence charged, when to be sent for trial to, S. 469 437
power of, as to cases of contempt, &c., mentioned in section 195, which are committed before itself, S. 477 445
appeal from conviction by mufassal Small Cause Court in contempt-case, to lie to, S. 486 451
appointment by District or Sub-divisional Magistrate of Public Prosecutors to appear before, S. 492 458
may direct admission to bail or reduction of bail, S. 498 464
issue by, of commission for examination of witnesses, S. 503 466
may direct Magistrate to recover penalty of bond for appearance before such Court, S. 516 474
when may direct committing Magistrate to execute order for disposal of property, S. 517 ... ... *ib.*

COURTS OF SMALL CAUSES, appeals from convictions by, in contempt-cases, to what Courts to lie, S. 486 451

COURTS OF WARDS, certain officers employed in collecting land revenue for, bound to report certain matters, S. 45 73

CRIMINAL BREACH OF TRUST, place of inquiry into and trial of, S. 181 ... 195
charge of, in case where it is doubtful what offence has been committed, S. 236, Ill. ... 251
charge of, S 238, Ill. 252

CRIMINAL CASES, TRANSFER OF, power of High Court to order transfer of, or, to withdraw same for trial before itself, S. 526 480
power of Governor-General in Council to order transfer of: procedure of receiving Court, S. 527 484
District or Sub-Divisional Magistrate may withdraw and refer, S. 528 ... ... *ib.*
Local Government may authorize District Magistrate to withdraw classes of, *ib.* ... ... *ib.*

PAGE

CRIMINAL COURTS, suspension and removal of Judges of, S. 26 57
prosecutions in, for acts done under Chapter ix, not to be instituted without sanction of Governor-General in Council, S. 132 131
CRIMINAL FORCE, under sections 352 and 358, Penal Code; compoundable, S. 345 336
restoration of immovable property of which person has been dispossessed by, S 522 477
CRIMINAL INTIMIDATION, security for keeping the peace on conviction of, S. 106 112
charge of, S. 221 Ill. 240
joinder of charges of, S. 235, Ill. 248
under Penal Code, section 506, may be tried summarily, S. 260 270
when compoundable, S. 345... 336
CRIMINAL MISAPPROPRIATION, place of inquiry into and trial of, S. 181 ... 195
CRIMINAL TRESPASS, under section 447, Penal Code; compoundable, S. 345 336
CROSS-EXAMINATION of prosecution witnesses by accused, in warrant-cases, S. 256 265
of defence witnesses, S. 290 299
of juror or assessor, S. 294 301
of witnesses by parties, when commission issued, S. 505 468
CRUELTY, habitual, valid excuse for wife refusing to live with her husband, S. 488 453
CULPABLE HOMICIDE may be inquired into and tried where wound inflicted or where death occurs, S. 179, Ill. 192
and exposure of child, joinder of charges of, S. 235, Ill 250
form of charge of, Sch. V. 28 615
and murder, forms of charges of, *ib.* ... ... *ib.*
CUSTODY, body of arrested persons to be actually touched unless submission is made to, S. 46 75
articles found upon arrested persons to be placed in safe, S. 51 ... 77
power of police, to arrest without warrant persons accomplishing or attempting escape from lawful, S. 54 78
period of detention in, of persons arrested without warrant, S. 61... 87
power to pursue and retake on escape from lawful, S. 66 ... 89
release from, of persons arrested under warrant, on security for appearance being furnished, S. 76... 96
authorization to take into, persons privy to deposit, &c., of stolen property, forged documents, &c., S. 98 109
detention in, of person likely to commit breach of the peace, S. 108 116
release of person in, only for purposes of inquiry, on proof of no necessity to require security, for keeping the peace or for good behaviour, S. 119 125
power of Magistrates to order detention of accused persons in, S. 167 171
of police, Magistrates authorizing detention in, to record reasons, *ib.* ... ... *ib.*
release of accused from, on completion of police investigation, S. 169 173
forwarding and detaining in, recusant complainants and witnesses, S. 171 175

PAGE

CUSTODY of police, Magistrate to hold inquiry into cause of death of person dying while in, S. 176 190
of accused pending trial by Court of Session or High Court, S. 220 239
remanding accused to, on jury's verdict being submitted by Sessions Judge to High Court, S. 307 309
detention in, of person accepting tender of pardon, S. 337 ... 323
offender to be kept in, when sentence of whipping cannot be carried out owing to his ill-health, S. 395 386
of lunatic pending investigation or trial, S. 466 435
of accused acquitted on ground of lunacy, S. 471 440
Local Government may order continued detention of lunatic prisoner in, after he has been declared fit to be discharged, S. 474... 442
delivery of lunatic to custody of relative or friend, S. 475 ... *ib.*
certain High Courts may direct liberation of persons illegally or improperly detained in, S. 491 457
certain High Courts may direct removal of prisoner from one custody to another for purpose of trial, *ib.* ... ... *ib.*
accused may be committed to, on failing to find sufficient sureties when the original ones have been discharged, S. 502 ... 465

D.

DACOITS, offence of having belonged to a gang of, where triable, S. 181 ... 195
DACOITY and dacoity with murder, offences of, where triable, *ib.* ... *ib.*
form of charge of, Sch. V. 28 615
DEATH, offences punishable with, warrant-cases, S. 4 43
confirmation of High Court required to Sessions, Additional Sessions, and Joint Sessions Judges' sentences of, S. 31 60
Assistant Sessions Judges may not pass sentence of, *ib.* ... *ib.*
under suspicious circumstances, certain persons to give information of occurrence of, S. 45 73
no right to cause, in endeavour to arrest person accused of an offence not punishable with death, S. 46 75
sudden or unnatural, police to inquire into, and report, S. 174 ... 178
police may forward corpse to medical officer for examination in case of doubt as to cause of, *ib.* ... . *ib.*
of person dying while in police custody, Magistrate to hold inquiry into cause of, S. 176 190
sudden or unnatural, inquiry by Magistrate into cause of any, *ib.* ... *ib.*
offences not punishable with, may be tried summarily, S. 260 ... 270
jurors for trials in Presidency-towns to be chosen from special jury list when offence charged is punishable with, S. 276 287
judgment to state reason why sentence of death was not passed in case of conviction of offence punishable with, S. 367 ... 358
sentence of, direction to be given in, S. 368 359
person sentenced to, to be informed of the period allowed for appeal, S. 371 361
sentence of: proceedings in confirmation :—
sentence to be submitted, S. 374 364
High Court may take additional evidence or direct it to be taken, S. 375 ... ... *ib.*
powers of High Court, S. 376 365

PAGE

DEATH, sentence of: confirmation or new order to be signed by two Judges, S. 377 ... 365
procedure where High Court Judges differ in opinion, S. 378 ... 366
copy of High Court's order to be read to Court of Session, S. 379 ... *ib.*
execution of sentence of, S. 381... 367
sentence of; when passed on escaped convict, to take effect immediately, S. 396 ... 387
commutation of sentence of, S. 402 ... 392
of accused or appellant, abatement of appeal on, S 431 ... 410
commitment of European British subject charged in mufassal with offence punishable with, to be made to High Court, S. 447 ... 421
form of warrant of commitment under sentence of, Sch. V. 34 ... 618
of execution on a sentence of, Sch. V. 35 ... *ib.*
DEBTS due to absconder, how attached, S. 88 ... 102
DECISION on certain questions arising in jury trials, to be given by Judge S. 298 ... 302
by jury, S. 299 ... 305
judgment to contain, and reasons therefor, S. 367 ... 358
DECLARATION dying given at police investigation, may be signed and may be admitted in evidence, S. 162 ... 162
DEFAMATION, cognizance of, not to be taken except upon complaint made by aggrieved person, S. 198 ... 214
no person to be convicted under section 238 of, unless complaint has been made by an aggrieved party, S. 238 ... 252
under sections 500, 501 and 502, Penal Code; compoundable, S. 345 ... 336
DEFECT in form of proceedings does not make distress illegal or distrainer a trespasser, S. 538 ... 491
DEFENCE evidence when to be taken in summons-cases, S 244 ... 256
in warrant-cases, S 256 ... 265
accused in trials before High Courts and Courts of Session when to be called upon to enter on his, S. 289 ... 297
opening case for, S. 290 ... 299
person incapable of making, owing to unsoundness of mind, Ss. 464, 468, 473 ... 433, 437, 441
DELIVERY of property to absconder, order prohibiting, S. 88 ... 101
of property seized by police, Magistrate to make order respecting, S 523 ... 478
DEMEANOUR of witness under examination, remarks respecting, S. 363 ... 353
DEPOSIT of stolen property, forged documents, &c.; search of place suspected to be used for, S. 98 ... 108
Magistrate may require, before summoning unnecessary defence witness on inquiry, S. 216 ... 232
before summoning witnesses on application of complainant or accused in summons-cases, S. 244 ... 256
before summoning witnesses on application of accused in warrant-cases, S. 257 268
in lieu of recognizance, S. 513 ... 472

PAGE

DEPOSITION of witness examined upon commission, to be sent to issuing Court; to be open to inspection of parties; may be read in evidence; to form part of the record, S. 507 469
of medical witness taken by a Magistrate may be given in evidence, or Court may call witness and examine him as to subject-matter of deposition, S. 509 ... ... *ib.*
DESERTER from Army or Navy, power of police to arrest without warrant person suspected of being, S. 54... 78
statutable provisions with regard to, *ib. note* 79
DETENTION of offenders arrested without warrant, period of, S. 61 ... 87
of accused persons, power of Magistrates to authorize, S. 167 ... 171
for more than fifteen days; procedure by Magistrate not having jurisdiction and considering it unnecessary to order, *ib.* ... *ib.*
in police custody, Magistrates authorizing, to record reasons, *ib.* *ib.*
of accused on discharge of jury, S. 308 312
of person accepting tender of pardon, S. 337 323
of offenders attending Court, S. 351 343
certain High Courts may direct liberation of persons under illegal or improper, S. 491 457
by Magistrate of property seized by police, S. 523 ... 478
See *Custody.*
DIARY, extract from, to be sent to Magistrate when police investigation cannot be completed in twenty-four hours, S. 167 171
Police-officer holding an investigation, to enter his proceedings in a; such diaries may be used by Courts, but not by accused persons, S. 172 176
DIRECTIONS of the nature of a *Habeas Corpus*, S. 491 457
DISCHARGE of persons arrested without warrant, S. 63 89
of person required to furnish security for keeping the peace or for good behaviour, S. 119 125
imprisoned for failure to give security, S. 124 127
of sureties to bond for keeping the peace or for good behaviour, S. 126 128
of accused on inquiry, S. 209 226
when the order may be made, *ib. note* ... 228
in warrant-case, S. 253 263
when complainant absents himself, S. 259 269
of jury on one of the jurors ceasing attendance, S. 282 291
in case of sickness of prisoner, S. 283 ... ... *ib.*
in High Court, when not unanimous, S. 305 308
Re-trial after, S. 308 312
of defendant on Advocate General staying prosecution: such discharge not to amount to an acquittal, S. 333 ... 322
of accused not on acquittal for purposes of section 403 (re-trial after conviction or acquittal), S. 403 392
of accused by Appellate Court, S. 423 405
improper: power of higher Court to order commitment, S. 436 ... 412
to direct further inquiry, S. 437 414
of lunatic prisoner, S. 474 442

PAGE

of offender on submission or apology, in certain cases of contempt, S. 484 450
of accused upon withdrawal of Public Prosecutor from prosecution, S. 494 460
of person accused of bailable offence, on his giving bond for appearance, S. 496 463
of sureties to bail-bond, S. 502 465
of bond to keep the peace: proceedings void when discharge made by Magistrate not empowered, S. 530 486
of person bound to be of good behaviour: proceedings void when discharge made by Magistrate not empowered, *ib.* ... ... *ib.*
of person imprisoned on failure to give security; forms of warrant, Sch. V, 15, 43 ... ... 609, 622

DISCRETION of Magistrate as to detention of person arrested in view to prevention of breach of the peace, S. 108 ... 116
allowing additional time for return of verdict by jury inquiring into propriety of order for removal of nuisance, S. 131 ... 131
of Court as to interpreting documents, S. 361 353

DISINTERMENT, power of Magistrate to order, S. 176 190

DISMISSAL of complaint, S. 203 218
is not an acquittal for purposes of section 403 (retrial after conviction or acquittal), S. 403 ... 393
power of Court of Session or District Magistrate to direct further inquiry, S. 437 414

DISOBEDIENCE to a direction of the law with intent to save another party from punishment, charge of, S. 223, Ill. 243

DISPERSION of assembly on command, S. 127 129
by civil force, S. 128 130
by military force, S. 129 ... ... *ib.*
procedure in reference to, S. 130 ... 131
by Military Officer in absence of instructions from a Magistrate, S. 131... ... ... *ib.*

DISPUTE concerning land, &c., which is likely to cause breach of peace; procedure on receipt of information as to, S. 145 146
concerning land, &c., which is likely to cause breach of peace; procedure on attachment of subject of, S. 146 151
concerning easements, &c., procedure on receipt of information as to, S 147 152

DISPUTES as to immoveable property: form of orders, Sch. V. 22, 23, 24 611, 612

DISTRESS and sale of moveable property in view to recovering costs of removal of nuisance, S. 140 ... 140
issue of warrant for recovery of fine by, S. 386 371
beyond jurisdiction, recovery of fine by, S. 387 373
warrant, Court issuing, may take bond for offender's appearance, S. 388 383
not illegal because of defect in form of proceedings, S. 538 ... 491
form of warrant of imprisonment on failure to recover amends by, Sch. V. 30... 617

PAGE

DISTRESS, form of warrant to levy fine by, Sch. V. 37 619
to enforce payment of maintenance by, Sch. V. 41... 621
See *Attachment*.

DISTRICT, Sub-division of a, made under Code, called "Sub-division," S. 4 ... 40
every Sessions Division to be a, or to consist of districts, S. 7 ... 45
Presidency-towns deemed, *ib.* ... ... *ib.*
mufassal, division of, into Sub-divisions, S. 8 ... ... *ib.*
mufassal, appointment of District Magistrates for, S. 10 ... 46
jurisdiction and powers of subordinate mufassal Magistrates, when not specially defined, to extend to whole, S. 12 ... ... *ib.*
framing of rules for guidance of Bench Magistrates in each, S. 16 52

DISTRICT JUDGE, appeals from convictions by Registrar or Sub-Registrar in contempt-cases, when to lie to, S. 486 451

DISTRICT MAGISTRATE, appointment of, S. 10 46
definition by, of territorial jurisdiction of subordinate mufassal Magistrates, S. 12... ... ... *ib.*
appointment of Sub-divisional Magistrates by, S. 13... 49
may frame rules for guidance of Benches, S. 16 ... 52
subordination of other Magistrates to, S. 17 53
not subordinate to Sessions Judge *ib.* ... 54
investiture of, with special powers, S. 30 59
specially empowered, higher powers of Court of, S. 34 64
ordinary powers of, S. 36 68
investiture of other Magistrates with additional powers by, subject to control of Local Government, S. 37 69
report of apprehensions to: he may direct such reports to be made to Sub-divisional Magistrate, S. 62 ... 88
may direct warrants of arrest to landholders, &c., S. 78 97
endorsement by, of order for attachment of absconder's property. S. 88 101
may grant warrant to search for document in custody of Postal or Telegraph Department, S. 96 ... 107
authorization by, of search of place suspected to contain stolen property, forged documents, &c, S. 98 108
power of Court of, to require security for keeping the peace on conviction, S. 106 ... 112
to issue order to show cause against security for keeping the peace before conviction, S. 107 114
to issue order to vagrants and suspected persons to show cause against security for good behaviour, S. 109 116
to issue order to habitual offenders to show cause against security for good behaviour, S. 110 117
to release person imprisoned for failing to give security, S. 124 127
power of, to cancel any bond for keeping the peace, S. 125 128

PAGE

DISTRICT MAGISTRATE, discharge by, of sureties to bond for peaceable conduct or for good behaviour, S. 126 128
power of, to make conditional order for removal of nuisance, S. 133 132
order made by, under section 133, not to be called in question by Civil Courts, *ib.* 133
power of, to prohibit repetition or continuance of nuisance, S. 143 142
power of, to issue order absolute at once in urgent cases of nuisance, S. 144 143
procedure by, on receipt of information as to dispute concerning lands, &c., which is likely to cause breach of peace, S. 145 146
attachment by, of land, &c., occasioning dispute, S. 146 151
procedure by, in reference to disputes concerning easements, &c., S. 147 152
power of, to order local inquiry into disputes concerning land, &c. S. 148 153
may hold inquests, S. 174 179
may empower any Magistrate to hold inquests, S. 174 *ib.*
power of, to issue process for offence committed beyond his local jurisdiction, S. 186 198
cognizance of offences by, S. 191 201
may specially empower any Magistrate to take cognizance of offences upon complaint or upon police report, *ib.* ... ... *ib.*
may transfer case after taking cognizance, S. 192 ... 203
may commit to Court of Session and High Court, S. 206 223
may try summarily: what offences he may so try, S. 260... 270
cases in which the special powers given by section 34 are exercised by a, not to be tried summarily, *ib.* ... *ib.*
to summon jurors and assessors under direction of Sessions Court, S. 326 320
to levy fine imposed on juror or assessor for non-attendance at Court of Session, S 332 321
may tender pardon, and may authorize any other mufassal Magistrate to make such tender, S. 337 ... 323
may be ordered to tender pardon after commitment, S. 338 327
may appoint Magistrate to receive case submitted by another who could not himself dispose of it, S. 346 338
empowered under section 30, offenders against coinage, stamp-law and property, when to be tried by, S. 348 340
submission of proceedings to, when Magistrate cannot pass sentence sufficiently severe: his powers, S. 349 341
may set aside conviction based on evidence partly recorded by one Magistrate and partly by another, S. 350 342

PAGE

DISTRICT MAGISTRATE, acting under section 34, procedure in reference to sentence submitted by, for confirmation, S. 380 ... 366
endorsement by, necessary to distress and sale of property for recovery of fine imposed in another jurisdiction, S. 387 373
sentence of second or third class Magistrate or second class Sub-divisional Magistrate acting under section 349, to lie to: he may transfer such appeals and again withdraw them, S. 407 396
appeal from sentence of, S. 408 397
no appeal from certain sentences by, except in case of combination of punishments, Ss. 413, 415 399, 400
certifying order of High Court on appeal to, S. 425... 407
power of, to call for records of inferior Courts, S. 435 411
records called for by Sub-divisional Magistrate, when to be submitted to, *ib.* ... ... *ib.*
power of, to order commitment when discharge appears improper, or to direct inquiry by lower Court, S. 436 412
revising proceedings, may make, or direct subordinate Magistrate to make inquiry, S. 437 ... 414
revising proceedings, may report case to High Court, and thereupon suspend sentence and release accused, S. 438 ... ... *ib.*
may pass orders for maintenance of wives and children, and appoint persons to receive payments; and may enforce such orders, S. 488 453
may alter rate of allowance sanctioned under section 488, S. 489 456
commission for examination of witnesses may be directed to: his duty on receiving same; he may appoint Magistrate of the first class to execute commission, S. 503 466
subordinate Magistrate may apply to, for issue of commission: his powers on such application, S. 506 468
endorsement by, necessary to execution in new jurisdiction of warrant for recovery of penalty of bond, S. 514 473
order for recovery of penalty of bond appealable to, or may be revised by him, S. 515 474
order for disposal of property may take form of reference to, S. 518 476
property seized by police may be sold under orders of, S. 524... 479
may withdraw or refer cases, S. 528 484
power of, to compel restoration of abducted females, S. 551... 507
additional powers with which other Magistrates may be invested by, Sch. IV. 601

DISTURBANCE of the public peace, assembly of persons likely to cause, to disperse on command, S. 127 129

DOCUMENT or other thing, summons or order to produce, S. 94 ... 106

PAGE

in custody of Postal or Telegraph Department, procedure as to production of, S. 95 106
or other thing, issue of search-warrant to cause production of, S. 96 107
the only Magistrates authorized to grant search-warrant for, *ib.*... *ib.*
forged, search of place suspected to contain, S. 98 108
produced before Court, power to impound, S. 104... ... 112
or other thing, search by or under orders of Police-officer in view to production of, S. 165 169
given in evidence, previous sanction necessary to prosecutions for certain offences relating to, S. 195 207
in jury trials Judge to decide meaning and construction of, S. 298 302
jury to determine meaning of words in, S. 299 305
interpretation of, S. 361 352
imprisonment or committal on refusal to produce, S. 485 ... 450
See *Forged Documents.*

DOOR, breaking open, in order to effect an arrest, S. 48 76
for purposes of liberation after entry into place in order to effect an arrest, S. 49 77

DUTY, power of police to arrest without warrant persons obstructing Police-officer in executien of his, S. 54 78

DYING DECLARATION, see *Declaration.*

E.

EMPRESS OF INDIA, see *Her Majesty the Queen.*

ENACTMENTS regulating mode or place of inquiry or trial, saving of, S. 5 ... 44
conferring jurisdiction on Magistrates or the Court of Session, application of, to European British subjects, S. 459 ... 431
repealed Sch. I 513

ENDORSEMENT on duplicate copy of summons for servant of Government or a Railway Company, S. 72 92
on duplicate copy of summons, admissible in evidence, S. 74 ... 93
on warrant of arrest for taking security, S. 76 96
of executing Officer's name, S. 79 ... 97
of name of Magistrate or Commissioner of Police in whose jurisdiction it is to be executed, S. 83 99
of name of Magistrate or Police-officer in whose jurisdiction it is to be executed, S. 84 ... ... *ib.*
of order for attachment of absconder's property in another jurisdiction, S. 88 101
by Magistrate beyond jurisdiction, of order for attachment and sale of property in view to recovering costs of removing nuisance, S. 140 140
to be made on complaint returned for presentation to proper tribunal, S. 201 217
necessary to distress and sale of property in another jurisdiction for recovery of fine, S. 387 373
by District Magistrate necessary to execution beyond jurisdiction of warrant for recovery of penalty of bond, S. 514 ... 473
on warrant of arrest, form of, Sch. V. 2 603

PAGE

ENGLISH, evidence taken down in mufassal in, when to be interpreted to accused, S. 356 346
Local Government may direct evidence in mufassal to be taken down in, S. 357 347
Magistrate's or Judge's memorandum of accused's examination, when to be written in, S. 364 354
judgment may be written in, S. 367 358
ENHANCEMENT of sentence on appeal, S. 423 405
ENTICING away married woman, and adultery, joinder of charges of, S. 235 Ill. 249
or taking away or detaining with criminal intent a married woman, compoundable, S. 345 336
ENTRY on the record, making, on proof of no necessity to require security for keeping the peace or for good behaviour, S. 119 125
in book, of information concerning commission of cognizable offence, Ss. 154, 155 ... ... 156, 157
in form directed by Local Government, of particulars of summary trials where no appeal lies, S. 263 275
on unsustainable charge: its effect, S. 273 286
on charge when Judge considers accused should not be re-tried after discharge of jury: its effect, S. 308 312
on unsustainable charge not an acquittal for purposes of section 403 (re-trial after conviction or acquittal), S. 403 392
ERROR in charge, effect of, S. 225 244
procedure by Appellate Court or Court of confirmation or revision in respect of, S. 232 247
clerical, in judgment, Court may correct, S. 369 360
in charge or proceedings; sentence or order when reversible by reason of, S. 537 490
ESCAPE, persons arrested not to be subject to more restraint than is necessary to prevent, S. 50 77
from lawful custody, power of police to arrest without warrant persons accomplishing or attempting, S. 54 78
from custody, power to pursue and re-take on, S. 66... ... 89
offence of, where triable, S. 181 195
ESCAPED CONVICTS, information regarding resort of, S. 45 73
direction of warrants to landholders, &c., for arrest of, S. 78 97
execution of sentences on, S. 396 387
not to be excused under section 396 from any punishment to which they are liable upon former or subsequent conviction, S. 398 389
EUROPEAN, fact to be mentioned in list when juror or assessor for Court of Session is an, S. 321 318
EUROPEANS AND AMERICANS, CRIMINAL PROCEEDINGS AGAINST,
or American, moiety of jury or of set of assessors for trial of European British subjects when to consist of, S. 451 ... 422
(not being European British subjects) or Americans, moiety of jury or of set of assessors for trial of, when to consist of Europeans or Americans, S. 460 431
(not being European British subjects) or Americans charged jointly with person of another race, trial of, S. 461 ... ... *ib.*

PAGE

(not being European British subjects), summoning and empanelling jurors for trial of, S. 462 432
(not being European British subjects), proceedings against, to be conducted according to provisions of Code, S. 463 ... *ib.*

EUROPEAN BRITISH SUBJECT, definition of "High Court" in reference to proceedings against, S. 4 41
definition of, *ib.* 43
mufassal Justices of the Peace to be, S. 22 ... 56
falling under European Vagrancy Act, 1874; provisions of sections 109 and 110 not applicable to, S. 111 119
may be tried for offences Committed in Native State, S. 188 199
persons charged in mufassal jointly with, when to be committed to High Court, S. 214 ... 231
power to appoint place of trial by High Court of, S. 336 323
parentage and residence of accused person not to be recorded in Presidency Magistrates' judgments when they are, S. 370 ... 361
may appeal either to High Court or Court of Session, S. 408 398
appeals may be made by, in petty cases, and from summary convictions, S. 416 400
may appeal from any sentence other than that of High Court, S. 416 *note* ... ... *ib.*
finality of orders on appeal, except those affecting, S. 430 410
Magistrates who may inquire into and try charges against, S. 443 419
contempts by, by whom triable, *ib. note* ... *ib.*
vagrant loses privilege of, *ib. note* ... *ib.*
qualifications required from Judges in Courts of Session in respect of jurisdiction over, S. 444 420
cognizance of offences committed by, S. 445... *ib.*
process compelling appearance of, to be made returnable to a Magistrate having jurisdiction, *ib.* ... ... *ib.*
sentences which may be passed by mufassal Magistrates on, S. 446 421
commitment of, when to be to Court of Session and when to High Court, S. 447 ... *ib.*
sentences which may be passed by Court of Session on: procedure when Judge finds his powers inadequate, S. 449 422
procedure by committing Magistrate where Sessions Judge is not an, S. 450 ... *ib.*
mixed jury or mixed set of assessors for trial of, S. 451 ... ... *ib.*

PAGE

EUROPEAN BRITISH SUBJECT, and person of another race jointly accused, trial of, S. 452 423
procedure on claim to be dealt with as an, S. 453 ... ... *ib.*
decision that person is not an, a ground of appeal, *ib* 424
failure to plead status a waiver, S. 454 ... *ib.*
Magistrate when to ask accused whether he is an, *ib.* 425
trial as a European British subject of person who is not one, S 455 426
under detention may apply for order to produce his person: procedure thereon; territories throughout which High Court may issue such orders, Ss. 456 to 458 .. 427
native States in which High Courts exercise criminal jurisdiction over S. 458 *note* ... 428
proceedings against, to be conducted according to provisions of Code, S. 463 432
effect of omission to ask person whether he is an, S. 534 489

EVIDENCE, what admissible in reference to service of summons, S. 74 ... 93
not necessarily to be taken before issuing proclamation for an absconder, S. 87 100
statement by Court as to publication of proclamation requiring appearance of absconder, conclusive, *ib.* 101
admissible to prove fact of person being an habitual offender, S. 117 122
power of High Court or Court of Session to call for further, in case of failure to comply with order for security under section 106 or 118, S. 123 126
discretion of Magistrate as to taking, before passing conditional order for removal of nuisance, S. 133 132
report of person deputed to conduct local inquiry into dispute concerning land, &c, may be read as, S. 148 153
statements of witnesses to police not to be used as, S. 162 ... 162
statements before inquiry or trial to be recorded in manner prescribed for record of, S. 164 167
taken by Magistrate on inquiry into cause of sudden or unnatural death, record of, S. 176 190
power to direct copies of depositions and exhibits to be received in, at inquiry into or trial of offence committed out of British India, S. 189 200
on inquiry. to be taken by Magistrate in manner provided, S. 208 223
Calcutta High Court regarding the taking of by Magistrate, S. 208 *note*... 224
of accomplice, S. 337 *note* 325
things to be produced in, to be forwarded, on commitment to Court of Session or High Court, S. 218 234
of witness not examined in the presence of the accused, S. 219 *note* 239
when to be taken in summons-cases, S. 244 256

PAGE

EVIDENCE, for prosecution in warrant-cases, when to be taken, S. 252 ... 262
Magistrate to summon witnesses to give, S. 252 262
accused in warrant-cases when to be called upon to produce his, S. 256 265
Magistrate trying warrant-case to issue process on application of accused for production of further, or to record his reasons for not doing so, S. 257 268
need not be recorded in summary trials in cases where no appeal lies, S. 263 275
substance of, to be embodied in judgment in summary trials where there is an appeal, S. 264 277
relied upon to be stated shortly by prosecutor when opening his case, S. 286 292
examination of accused before committing Magistrate to be read as, S. 287 ... ... *ib.*
at preliminary inquiry, when admissible, S. 288 294
accused to be asked whether he means to adduce evidence: procedure on his replying, S. 289 297
legal, to sustain charge, procedure on Court finding or not finding, *ib.* ... . *ib.*
for prosecution, defence may comment on, S. 290 ... 299
prosecutor's right of reply when accused has stated that he means to adduce, S. 292 300
summing-up, in charge to jury, S. 297 302
in jury trials judge to decide admissibility of, and may prevent production of inadmissible, S. 298 ... ... *ib.*
in jury trials Judge to decide meaning and construction of documents given in, *ib.* 303
tender of pardon in view to obtaining, Ss. 337, 338 ... 323, 327
statement made by any person under pardon may be used against him as, S. 339 328
accused's answers may be given in, S. 342 330
likelihood of obtaining further, a reasonable cause for remand, S. 344 334
Magistrate receiving case from another who could not pass sufficiently severe sentence may take, S. 349 341
partly recorded by one Magistrate and partly by another, conviction or commitment on, S. 350 342

MODE OF TAKING AND RECORDING,
taken under certain chapters, to be taken in presence of accused or his pleader, S 353 344
manner of recording, in the mufassal, indicated, S. 354 ... ... *ib.*
in mufassal, Local Government may appoint manner and language of record of, S. 357 347
in mufassal summons-cases and in trials of certain offences by 1st and 2nd class Magistrates, discretion as to recording, S. 358 ... 349
taken under section 356 or 357, ordinarily to be recorded in narrative form, S. 359 ... . *ib.*
order of Calcutta High Court relative to the taking of, S. 359 *note* 350

PAGE

EVIDENCE recorded under section 356: to be read over to the witness; to be corrected when necessary, or memorandum to be made; to be interpreted to witness when necessary, S. 360 532
interpretation of, to accused or his pleader, S 361 ... *ib.*
record of, in certain cases, in Presidency Magistrates' Courts, S. 362 353
record of, in chartered High Courts and Chief Court, Panjab, S. 365 357
High Court may take additional, or direct it to be taken, S. 375 .. 364
Sessions Judge may take additional, in reference to sentence submitted for confirmation, or may direct it to be taken, S. 383 .. 366
Appellate Court may take additional, or direct it to be taken, S. 428 409
certificate that accused who has been insane is capable of making his defence, receivable in, S. 467 436
certificate of Inspector General of Prisons or visitors of Lunatic Asylum receivable as, S. 473 441
commission of inquiry in cases of lunacy may take, S. 474 .. 442
certain High Courts may direct production of prisoner in order to give, S. 491 458
issue of commission by certain superior Magistrates or by Court of Session or High Court for taking: duty of receiving officer, S. 503 466
mufassal subordinate Magistrates may apply to District Magistrate for issue of commission for taking, S. 506 468
commission, return thereto and depositions of witnesses may, subject to all just exceptions, be read in, S. 507 469
SPECIAL RULES OF,
deposition of medical witness taken by Magistrate may be given in, or Court may call witness, S 509 469
report of Chemical Examiner may be used as, S. 510 471
previous conviction or acquittal how proved, S. 511 ... *ib.*
record of, in absence of accused, S. 512 472
to be taken when record of confession or other statement made by accused is not complete, S. 533 488
form of bond to prosecute or give evidence, Sch. V. 26 613
See *False Evidence.*

EXAMINATION of witness by police, S. 161 162
of complainant, to be on oath, and to be reduced into writing and signed by complainant and Magistrate, S. 200 ... 215
of complainant by Presidency Magistrate may be made on oath or not, at Magistrate's discretion, *ib.* ... ... *ib.*
of accused by Magistrate, S. 209 *note* 227
of accused prior to acquittal in summons-cases, optional with Magistrate, S. 245 257
prior to discharge in warrant-cases, optional with Magistrate, S. 253 263
to be entered in record of summary trials, S. 263 275
of accused before Magistrate, to be read as evidence, S. 287 ... 292
of juror or assessor, S 294 301
of person accepting tender of pardon, S. 337 323
of offenders attending Court, S. 351 343
of accused, how recorded; except in trials before chartered High Courts, in summons-cases, and in summary trials, S. 364 354

PAGE

EXAMINATION of accused to be recorded in Presidency Magistrate's judgment, S. 370 361
medical, of accused, when of unsound mind: examination of medical officer thereupon; the latter examination to be reduced into writing, S. 464 433
of medical witness whose deposition has been taken, S. 509 ... 469
of prosecution witnesses in absence of accused, S. 512 ... 472
power to order prisoner in jail to be brought up for, S. 542 ... 494

EXECUTION, aid to person, other than a Police-officer, executing warrant, S. 43 71
currency of warrant of arrest until, S. 75 94
discretion of certain Courts as to direction of warrants of arrest in view to their immediate, S. 77 96
of warrants of arrest, when directed to several persons, *ib.* ... *ib.*
directed to landholder, &c, S. 78 ... 97
directed to Police-officers, S. 79 ... ... *ib*
notification of substance of warrant, S. 80 98
speedy production of prisoner before Court, S. 81 ... ... *ib.*
where may be effected, S. 82 . *ib.*
outside jurisdiction, warrant of arrest forwarded to Magistrate for, S. 83 ... ... *ib.*
outside jurisdiction, warrant of arrest directed to Police-officer for, S. 84 99
of warrant of arrest outside jurisdiction, procedure on, S. 85 ... *ib.*
proclamation for person absconding to prevent, S. 87... 100
restoration of attached property on absconder's proving absence of intention to avoid, S. 89 103
of search-warrant, direction to person charged with, as to extent of search, S. 97 108
of warrant issued under section 114 copy of order made under section 112 to be delivered on, S. 115 122
of warrant issued under section 114, inquiry as to truth of information on, S. 117 122
by sureties, of bond for keeping the peace or for good behaviour, when Principal is a minor, S. 118 124
of order passed on failure to appoint jury in nuisance-case, or on omission of jury to return verdict; manner of, S. 141 ... 141
of sentence of death to be stayed pending confirmation by High Court, S. 374 364
of High Court's order on case submitted for confirmation of sentence of death, S. 381 367
of capital sentence on pregnant woman, postponement of, S. 382 368
of warrant for levy of fine, S. 387 373
of sentence, warrant to be returned to Court on, S. 400 ... 390
power to suspend, S. 401 391
of warrant for recovery of penalty of bond, S. 514 ... 473
of sentence of death; form of warrant, Sch. V. 35 618

EX-PARTE, when orders in urgent cases of nuisance may be passed, S. 144 143

PAGE

EXPENSES of local inquiry into dispute concerning land &c., declaration as to payment of, S. 148 153
of obtaining attendance of unnecessary defence in witnesses on inquiry, Magistrate may require deposit to defray, S. 216 ... 232
of witness applied for on summons-case Magistrate may require deposit for, S. 224... 256
of defence witnesses applied for on warrant-case, Magistrate may require deposit for, S. 257 268
of complainant and witnesses payment of, S. 544... ... 495
of prosecution, power to order payment from fine of, S. 545 ... 503

F.

FACTS, on which defence intends to rely to be stated, S. 290 299
in jury trials Judge to decide relevancy of, S. 298 302
FACT, in jury trials Judge to decide upon all matters of, which it may be necessary to prove in order to enable evidence of particular matters to be given, *ib.* 303
or mixed law and, Judge may express to jury his opinion on any questions of, *ib.* ... ... *ib.*
FACTS, jury to decide true view of, S. 299 305
FACT, jury to decide questions of, *ib.* ... ... *ib.*
appeal admissible on matter of, except where trial was by jury, S. 418 401
FAILURE OF JUSTICE, a ground for setting aside finding, sentence or order on proceedings in wrong place, S. 531 ... 487
for invalidating finding or sentence when no charge has been framed, S. 535 ... 489
finding, sentence or order reversible when error, &c., in proceedings has occasioned, S. 537 490
FALSE ANSWERS, accused not liable for giving; but Court and jury to draw their inferences, S, 342 330
FALSE CHARGE and giving false evidence, joinder of charges of, S. 235, Ill. ... 249
FALSE EVIDENCE, previous sanction necessary to prosecutions for giving, S. 195 207
charge of giving, S. 223, Ill. 243
using, S. 232, Ill. 247
and false charge; joinder of charges, S. 235, Ill. 249
FALSE NAME OR RESIDENCE, committer of non-cognizable offence giving, S. 57 85
FEMALES, abducted, power to compel restoration of, S. 551 507
FENCING tank or well, conditional order for, S. 133 133
FINDING in summons-cases not limited by complaint or summons, S. 246 ... 258
to be entered in record of summary trial, S. 263 275
of not guilty, when Court may record, in trial with assessors, S. 289 297
Appellate Court may reverse or alter, S. 423 405
to state whether accused committed offence charged or not, when he is acquitted on ground of lunacy, S. 470 437
record of, in contempt-cases of which Court insulted takes cognizance, S. 481 448
Appellate Court may alter, in contempt-case, S. 486 451
arrived at on proceedings in wrong place, when to be set aside, S. 531 487

PAGE

FINDING when invalid, if no charge has been framed, S. 535 489
when reversible by reason of error, omission or irregularity in charge or proceedings, S. 537 490

FINE which may be awarded by different Courts of Magistrates, amounts of, S. 32 61
terms of imprisonment which may be awarded by Courts of Magistrates in default of payment of, S. 33 62
Magistrate cannot fix time within which payment of, to be made, S. 33 *note* 64
how refunded, S. 33 *note* 64
exceeding two hundred rupees, record of evidence in cases where Presidency Magistrates impose, S. 362 353
judgment in case of sentence of, may be pronounced in presence of accused's pleader, S. 366 357
exceeding two hundred rupees, reasons for conviction to be stated in Presidency Magistrate's judgment awarding, S. 370 361
issue of warrant for levy of, S. 386 371
effect of warrant for levy of, S. 387 373
orders of the High Court with regard to the realization of, S. 387 *note* *ib.*
who may issue warrant for levy of, S. 389 383
sentence of, when imposed on escaped convict, to take effect immediately, S. 396... 387
not exceeding two hundred rupees; no appeal from summary conviction with, except when combined with another punishment, Ss. 414, 415 ... ... 399, 400
imprisonment in default of, not a combined sentence for purposes of section 415, S. 415 400
to which European British subject may be sentenced by mufassal Magistrate, limit of, S. 446 421
to which European British subject may be sentenced by Court of Session, limit of, S. 449 422
in certain cases of contempt, awarding: punishment in default, S. 480 447
power to order payment of prosecution expenses or compensation, out of fine; such payment to be deferred pending appeal, S. 545 ... 503
forms of warrant of commitment on sentence of, if passed by a Magistrate, Sch. V. 29 616
form of warrant to levy, by distress and sale, Sch. V. 37 ... 619

FORCE, civil, use of, to disperse assembly, S. 128 130
military, dispersion of assembly by, S. 129 ... ... *ib.*
procedure in reference to dispersion of assembly by, S. 130 131
excess, not to be used by the military in dispersing assembly *ib.* ... *ib.*
military, dispersion of assembly by, without instructions from a Magistrate, S. 131 ... ... *ib.*
See *Criminal Force.*

FOREMAN of jury for inquiry into propriety of order for removal of nuisance: to be nominated by Magistrate; summoning foreman, S. 138 138
to be appointed by jury, S. 280 289
by Court, failing his appointment by jury, S. 280... 290
of jury, duty of, *ib.* ... ... *ib.*
to deliver verdict of jury, S. 301 306

PAGE

FOREMAN to inform Judge when jury in High Court are not unanimous, but six are of one opinion, S 305 308
FORFEITURE, witness at police investigation may refuse to answer questions having tendency to expose him to, S. 161 162
witness at police investigation into sudden or unnatural death not to answer questions tending to expose him to, S. 175 ... 190
of bond, procedure on, Ss. 514, 516 ... ... 473, 474
FORGED DOCUMENT, search of place suspected to contain, S. 98 ... 108
using as genuine and using in evidence, joinder of charges of, S. 235 Ill. 250
FORGING, search of place suspected to contain materials for, S. 98 ... 108
FORM of summons, S. 68 90
of warrant of arrest, S. 75 94
of book for entry of information concerning commission of non-cognizable offences, Ss. 154, 155 ... ... 156, 157
of charges, S. 221 to 232 ... ... 240—247
of charges, Court framing charge after commitment, or altering existing charge, to be guided by rules as to, S. 226 245
of entry of particulars of summary trials where no appeal lies, to be prescribed by Local Government, S. 263 275
of summons to jurors and assessors, S. 328 321
of recording evidence in certain cases in the mufassal, S. 359 349
in Presidency Magistrates' Courts, S. 362 353
of appeal, S. 419 402
FORT ST. GEORGE Presidency, military bazars at cantonments and stations occupied by troops of, S. 1 ... 38
Presidency, heads of villages in, not affected by Code, except as specially provided, *ib.* ... ... *ib.*
investigations into sudden or unnatural deaths in territories administered by Governor of, may be made by heads of villages, S 174 178
FORT WILLIAM, local limits of certain jurisdiction of High Court at, called "Presidency-town", S. 4 39
High Court, a "High Court" as regards proceedings against European British subjects, *ib.* ... ... *ib.*
High Court may issue directions of the nature of a *habeas corpus*, and may frame rules, S. 491 457
FRACTURES, to be described in Police-officer's report or sudden or unnatural death, S. 174 178
FRAUD, insufficient sureties accepted owing to, S. 501 465

G.

GAZETTE, appointment of Justices of the Peace to be notified in the, Ss. 22, 23 56
notification in, of prolongation of currency of orders made in urgent cases of nuisance, S. 144 143
lists of jurors for High Court to be published in, S. 314 ... 315
notice of High Court sittings to be given in, S. 335 323
of India, notification in, of transfer of case by Governor General in Council, S. 527 484
publication in, of rules framed by High Courts, S. 553 508

PAGE

GOOD BEHAVIOUR, SECURITY FOR,
of vagrants, &c.; showing cause against security, S. 109 ... 116
of habitual offenders ditto ditto, S. 110 117
order for security for: form of inquiry as to truth of information, S. 117 122
security for; passing, after inquiry, order requiring, S. 118 124
discharge on proof of no necessity to require security for, S. 119 125
contents of bond for, S. 121 ... ... *ib.*
what constitutes breach of bond for, *ib.* 126
rejection of sureties offered to bond for: reasons to be recorded, S 122 ... ... *ib.*
failure to give security for: kind of imprisonment awardable, S. 123 ... ... *ib.*
discharge of sureties to bond for: reasons to be recorded, S 126 128
appeal from order requiring security for, S. 406 ... 396
deposit may be accepted instead of recognizance, except in case of bond for, S. 513 472
discharge of person bound to be of: proceedings void when discharge made by Magistrate not empowered, S. 530 ... 486
form of bond for, Sch. V. 11 607
form of warrant of commitment on failure to find security for, Sch. V. 14 608
form of notice to surety on forfeiture of bond for, Sch. V. 46 623
form of warrant of attachment and sale on forfeiture of bond for, Sch. V. 52 625
of imprisonment on forfeiture of bond for, Sch. V. 53... ... ... *ib.*

GOOD FAITH, persons acting under Chapter ix in, to be deemed as not having thereby committed an offence, S 132 131
no suit to lie in respect of thing done in, under section 140, S. 140 140
no suit to lie in respect of thing done in, under section 142, S. 142 142
proceedings not vitiated when Magistrate not empowered does certain things erroneously in, S. 529 485

GOODS stolen, receiving or retaining, may be inquired into and tried where goods stolen or where received or retained, S 180 194

GOVERNMENT, continuance of powers on transfer from one office to another under same, S. 40 69
service of summons on servant of, S. 72 92
absconders' attached property to be at disposal of, S. 88 ... 101
restoration of attached property at disposal of, S. 89 ... 103
may determine manner, &c., of prosecution of Judge or public servant, S. 197 210
officer, copy of conviction of, to be sent to Head of his department, S. 245 *note* 257
exemption of salaried officers of, from service as jurors in High Courts, S. 313 314

PAGE

GOVERNMENT when servant of, may be excused attendance as juror or assessor, S. 329 321
property seized by police to be at disposal of, when no claimant appears, S. 524 479
See *Local Government.*

GOVERNMENT SOLICITOR may conduct prosecution without obtaining special permission, S. 495 461

GOVERNOR GENERAL, a Justice of the Peace in virtue of his office, S. 25 ... 57

GOVERNOR GENERAL IN COUNCIL may in certain cases appoint an officer to act as a "High Court," S. 4 ... 41
previous sanction of, required to alteration of number of Sessions Divisions or of Districts, S. 7 45
previous sanction of, required to delegation of authority to appoint "Special Magistrates," S. 14 50
appointment of Justices of the Peace for the mufassal by, S. 22 56
appointment of Justices of the Peace for Calcutta by, S. 23 ... ... *ib.*
present Justices of the Peace for mufassal to be deemed to have been appointed by, S. 24 57
suspension and removal of Judges and Magistrates by, S. 26 ... ... *ib.*
suspension and removal of Justices of the Peace by, S. 27 ... ... *ib.*
sanction of, required to prosecutions for acts done under Chapter ix, S. 132 ... 131
may appoint place of sittings of Calcutta High Court, S. 335 323
Calcutta High Court may hold sittings at any place within its appellate jurisdiction when approved by, S. 335 ... 323
power of, to suspend or remit sentences, and to cancel such suspensions or remissions, S. 401 391
to commute sentences, S. 402 ... 392
may appoint additional territories throughout which High Court may issue orders to produce person of European British subject, S. 458 427
power of, to appoint Public Prosecutors, S. 492 458
power of, to transfer cases, S. 527 ... 484
rules for payment of expenses of complainant and witnesses to have previous sanction of, S. 544 495
may direct military offender to be tried by Criminal Court, S. 549... ... 507
previous sanction of, required to rules of Fort William High Court for inspection of records of subordinate Courts, S. 553... 508

PAGE

GRANDCHILD, any legitimate, of certain persons, a "European British subject," S. 4 43
GRATIFICATION, accepting illegal: form of charge, Sch. V. 28 614
GRIEVOUS HURT may be inquired into and tried where person was wounded or where he was laid up, S. 179, Ill. 192
charges of, Ss. 221, 233, 238, Ills. 241, 248, 253
and rescue, joinder of charges of, S. 235, Ill. ... 249
rioting, and assaulting a public servant, joinder of charges of, S. 235, Ill. 250
under section 335, Penal Code; when compoundable, S. 345 336
form of charge, Sch. V. 28 615
GROUNDS left unoccupied for sanitary and recreative purposes, included in "public place" as used in section 133, S. 133 132
GUARDIAN, cognizance of adultery to be taken only on complaint of husband or, S. 199 214
copy of maintenance order to be given to person in whose favour it is made, or to his, S. 490 457

H.

HABEAS CORPUS, directions of the nature of a, S. 491... 457
HABITUAL thieves, &c., arrest of persons who are by repute, S. 55 ... 83
issue of order to, to show cause against security for good behaviour, S. 110 117
HABITUAL OFFENDER, fact of person being an, how proved, *ib.* ... *ib*
previously convicted of certain offences against coinage, stamp-law and property, trial of, S. 348 340
HEADS OF VILLAGES in Madras Presidency not affected by Code, except as specially provided, S. 1 38
bound to report certain matters, S. 45 73
investigations into sudden or unnatural deaths in Madras and Bombay may be made by, S. 174... ... 178
HEALTH of the community, conditional order for suppression of trade, &c., injurious to, S. 133 132
issue of order in urgent cases of nuisance in view to prevention of danger to, S. 144 143
whipping not to be inflicted if offender is not in fit state of, S. 394 .. 385
HEARING of case, proof of service of summons when serving officer not present at, S. 74 93
fact of confession made before inquiry or trial being taken in Magistrate's, to be certified, S. 164 167
evidence in mufassal to be taken down in presence and hearing of Judge or Magistrate, S. 356 346
Magistrate or Judge to certify that accused's examination was taken in his presence and, S. 364 354
by new Judge in case submitted to High Court for confirmation of sentence, S. 378 366
appellant or his pleader, and Public Prosecutor, on an appeal, S. 423, 405
by new Judge, in appeals, S. 429 409
of parties, optional with Court of Revision: but accused to be heard in certain cases, Ss. 439, 440, ... 416, 418

PAGE

HEARING of application for transfer of case, twenty-four hours to elapse between notice and, S. 526 481
HER MAJESTY THE QUEEN, right of, to grant pardons, &c., saved, S. 401 ... 391
HIGH COURTS, Presidency, local limits of certain jurisdiction of, "Presidency-towns," S. 4 41
HIGH COURT, definition of, Ss. 4, 266 ... ... 41, 279
Justices of the Peace appointed under commission issued by a, to continue to hold office, S. 24 57
chartered, Judges of, Justices of the Peace in virtue of their office, S. 25 ... ... *ib.*
Local Government may not suspend or remove Judges of, S. 26 ... ... *ib.*
may try any offence under Penal Code, S. 28 58
when may try offences under other laws, S. 29 59
may pass any sentence authorized by law, S. 31 ... 60
sentences of death passed by Sessions, Additional Sessions, and Joint Sessions Judges, subject to confirmation by, S. 31 ... *ib.*
procedure as to production of document in custody of Postal Department when required by S. 95 106
power of, to require security for keeping the peace on conviction, S. 106 112
procedure of, on apprehension of breach of the peace, S. 108 ... 116
proceedings in case of failure to comply with order for security under section 106 or 118, S. 123 126
discretion of, as to kind of imprisonment awardable on failure to give security for good behaviour, *ib.* ... ... *ib.*
release by, of person imprisoned for failure to give security, S. 124 127
to decide place of inquiry or trial in case of doubt, S. 185 ... 197
offence committed beyond jurisdiction, when to be reported for orders of, S. 186 198
cognizance of offences by, S. 194... 206
Magistrates who may commit to, S. 206 223
persons triable by Court of Session not to be committed to, except as specially provided, S. 206 ... ... *ib.*
procedure to be adopted in inquiries into cases triable by, S. 207 ... ... *ib.*
order of commitment to, when to be made, S. 213 ... 229
person charged in mufassal jointly with European British subject, when to be committed to, S. 214 231
only, can quash a commitment made to itself or to Court of Session, S. 215 232
bond for securing attendance of complainants and witnesses at, S. 217 233
detention and forwardal in custody of complainants and witnesses refusing to attend at, *ib.* ... ... *ib.*
charge, record of inquiry, and things to be produced in evidence, to be sent to an officer of, on commitment, S. 218 234
English translation of record of inquiry to be forwarded when commitment is to, S. 218 ... ... *ib.*

PAGE

HIGH COURT, in confirmation or revision, procedure by, in respect of absence of or error in charge, S. 232 247
trials before, to be by jury, S. 267 279
trials of cases transferred to a, may, if the Court so direct, be by jury, S. 267 280
number of jury in trials before, S. 274 286
to direct manner of choosing jurors by lot, S. 276 ... 287
jurors for trials in Presidency-towns to be chosen from special jury list when so directed by a Judge of the, *ib.* ... *ib.*
objections to jurors in, without stating grounds, S. 277 ... 288
locking up jury for, S. 296 302
verdict of jury in, when to prevail, S. 305 308
procedure by, when jury are not unanimous, and also when Judge does not agree with the majority, *ib.* ... .. *ib.*
submission of case to, when Sessions Judge disagrees with verdict of jury: powers of High Court on such reference, S 307 309
sittings, time of holding, S. 334 322
place of holding, S. 335 323
notice of, S. 335... ... ... *ib.*
to pass orders on proceedings when they are not understood by accused, S. 341 329
proceedure when Magistrate finds case should be tried by, S. 347 339
offenders against coinage, stamp-law and property, when to be committed to, S. 348 340
may set aside conviction based on evidence partly recorded by one Magistrate and partly by another, S. 350 342
chartered, record of evidence in, S. 365 357
sentences of death, subject to confirmation by, S. 374 ... 364
may take additional evidence or direct it to be taken, and may direct attendance of convict: evidence to be certified to the Court when not taken by itself, S. 375 ... ... *ib.*
powers of, in reference to sentence of death submitted for confirmation, S. 376 365
appeal from sentences subject to confirmation by Sessions Court, to lie to, S 408 397
European British subject may appeal either to Court of Session or, *ib.* 398
appeal from sentence of Sessions Court, to lie to, S. 410 . *ib.*
Presidency Magistrate, to lie to, S. 411 *ib.*
appeal to, against an acquittal by another Court, S. 417 ... 400
rules of Chapter xxvi as to judgments, to apply to judgments of Appellate Court other than, S. 424... ... 407
to certify its order on appeal to lower Court or District Magistrate: orders thereupon to conform with High Courts's decision, S. 425 407
may order suspension of sentence pending appeal, S. 426 ... 408
may issue warrant of arrest on presentation of appeal against acquittal, S. 427 409

PAGE

HIGH COURT reference by Presidency Magistrate to: disposal of case according to its decision; Court may pass order as to payment of costs, S. 432 410
reference by Judge of, S. 434 411
power of, to call for records of inferior Courts, S. 435 ... ... *ib.*
report by Court of Session or District Magistrate to, on revision of proceedings, S. 438 414
powers of, in revision, S. 439 416
commitment of European British subject, when to be made to, S 447 421
transfer of trial of European British subject from Court of Session to, S. 449 422
application of European British subject for order to produce his person: procedure thereon; territories throughout which High Court may issue such orders, Ss. 456 to 458 ... 427
procedure by, in case of accused being lunatic: trial of fact of unsoundness to be deemed part of the trial before the Court, S. 465 434
accused sane at time of inquiry or trial by Magistrate but not when he committed offence charged, when to be sent for trial to, S. 469 437
chartered, witness in, refusing to answer or to produce document, to be deemed guilty of a contempt, S. 485 450
appeal from conviction by Presidency Small Cause Court in contempt-case, to lie to, S. 486 451
Registrar or Sub-Registrar in contempt-case, when to lie to, S. 486 451
which may issue directions of the nature of a *habeas corpus*: may frame rules, S. 491 457
may direct admission to bail or reduction of bail, S. 498 ... 464
issue by, of commission for examination of witnesses, S. 503 .. 466
saving of High Courts' power to issue commissions under 39 and 40 Vic, Cap. 46, section 3, S. 504 467
may direct Magistrate to recover penalty of bond to appear before such Court, S. 516 474
when may direct committing Magistrate to execute order for disposal of property, S 517 ... ... *ib.*
may order case to be tried by Court not empowered under sections 178 to 185, or may transfer it, or may itself try it: grounds on which this power may be exercised; procedure to be observed by High Court when it tries case itself; may require bond from accused for payment of prosecutor's costs; saving of prosecutions of Judges and public servants, S. 526 480
power of Governor General in Council to order transfer of case from one to another, S. 527 484
power of, to make rules for certain purposes, and to frame forms, S. 553 508
chartered, power to decide language of Courts other than, S. 553 512

PAGE

HOUSE, included in "Place," S. 4 43
breaking open door or window of, in order to effect an arrest, S. 48... 76
for purposes of liberation, after entry in order to effect an arrest, S. 49 77
HOUSE-BREAKERS, arrest of persons who are by repute habitual, S. 55 ... 83
issue of order to habitual, to show cause against security for good behaviour. S. 110 117
HOUSE-BREAKING and adultery: joinder of charges of, S. 235 Ill. 249
HOUSE-TRESPASS under Penal Code, section 448, may be tried summarily, S. 260.. ... 270
compoundable, S. 345 ... 336
HURT and assault, joinder of charges of, S. 235, Ill. 250
and robbery, joinder of charges of, *ib.* ... ... *ib.*
under Penal Code, section 323; may be tried summarily, S. 260 ... 270
under Penal Code, sections 323, 324, 337 and 338; compoundable, S. 345 336
under Penal Code, section 324; when compoundable, *ib.* ... ... *ib.*
HUSBAND, complaint by, or on behalf of, necessary to prosecution for adultery, S. 199 214
may compound adultery or enticing, &c. S. 345 336
HUSBAND AND WIFE: see *Maintenance.*

I.

IDIOT, who may compound on behalf of, S. 345... 336
ILLEGITIMATE CHILDREN, order for maintenance of, Ss. 488, 489, 490 . ... 453, 456, 457
IMMOVEABLE, see *Property.*
IMPARTIAL: when impartial inquiry or trial cannot be had, High Court may transfer case, S. 526 480
IMPOUNDING document or other thing produced before Court, S. 104... ... 112
IMPRISONMENT for more than six months, offences punishable with, "warrant-cases," S. 4 43
up to seven years, first class Magistrates not to try offences under laws other than Penal Code which are punishable with, S. 29 59
up to three years, second class Magistrates ditto, *ib.* ... *ib.*
up to one year, third class Magistrates ditto, *ib.* ... ... *ib.*
for more than seven years, Assistant Sessions Judges may not pass sentences of, S. 31 60
for more than three years, confirmation by Sessions Judge required to Assistant Sessions Judges' sentences to, *ib.* ... *ib.*
which may be passed by Courts of Magistrates of various classes, terms of, S. 32 61
meaning of, *ib. note* ... ... *ib.*
which may be passed by Courts of Magistrates in default of payment of fine, S. 33 62
which may be passed by Courts of District Magistrates specially empowered, terms of, S. 34 64

PAGE

IMPRISONMENT for more than three years passed by Courts of District Magistrates specially empowered, sentences of, subject to confirmation by Sessions Judge, S. 34 64
commencement of, when transportation and imprisonment are awarded on a simultaneous conviction of several offences, S. 35 65
period for security under section 106 or 118 to commence on expiration of sentence of, S. 120 125
in default of security under section 106 or 118, S. 123 ... 126
in default of security under section 106 or 118 not to exceed three years, *ib.* 127
for failure to give security for keeping the peace, to be simple, *ib.* ... ... *ib.*
for good behaviour, may be either rigorous or simple, *ib.* ... ... *ib.*
release of person suffering, S. 124 .. ... *ib.*
report to High Court or Court of Session in view to release of person suffering, *ib.* ... *ib.*
in default of payment of compensation by complainant, S. 250 259
for a term exceeding six months, offences not punishable with, may be tried summarily, S. 260 270
in civil jail, jurors failing to pay fine for non-attendance, to be liable to, S. 318, 332 ... ... 316, 321
for seven years, criminal intimidation compoundable, except when punishable with, S. 345 336
for more than six months, record of evidence in cases where Presidency Magistrates award, S. 362 353
reasons for conviction to be stated in Presidency Magistrate's judgment awarding, S. 370 361
execution of sentence of, S 383 369
direction of warrant for execution of sentence of, S. 384 ... 370
execution of sentence of whipping in addition to, S. 391 ... 383
in lieu of whipping, S. 395 386
sentence of, passed on escaped convict, when to take effect: comparative severity of various punishments, S. 396 387
on offender already sentenced for another offence, when to commence, S. 397 388
for more than six months, appeal from Presidency Magistrate's sentence of, S. 411 398
not exceeding one month, no appeal from orders of certain mufassal Courts awarding, except when combined with some other punishment, Ss. 413, 415 ... ... 399, 400
not exceeding three months, no appeal from summary conviction with sentence of, except when combined with another punishment, *ib.* ... ... *ib.*
in default of fine, not a combined sentence for purposes of section 415, S. 415 ... ... *ib.*

PAGE

IMPRISONMENT computing term of, when convict has been released pending appeal, S. 426 408
which mufassal Magistrate may pass on European British subject, limit of, S. 446 421
which Court of Session may pass on European British subject, limit of, S. 449 422
in default of fine, awarding, in certain cases of contempt, S. 480 417
on refusal to answer or to produce document, S. 485 ... 450
in default of payment of maintenance, S. 488 ... 453
failing payment of penalty of bond, S. 514 473
power of Local Government to appoint place of, S. 541 ... 493
in default of payment of compensation to person groundlessly given in charge in Presidency-town, S. 552 508
See *Rigorous Imprisonment; Simple Imprisonment.*

INADMISSABLE EVIDENCE, in jury trials Judge may prevent production of, S. 298 302

INDIAN PENAL CODE, words and expressions defined in, S. 4 ... 43
all offences under, to be inquired into and tried according to provisions of Code, S. 5 44
Courts which may try offences under, S. 28 ... 58
Public to give information of commission of offences under certain sections of, S. 44 71
section 188, liability of person not obeying order as to removal of nuisance to punishment prescribed by, S. 136 130
prohibition of repetition or continuance of "public nuisance" as defined in, S. 143 142
offences under, which may be compounded, S. 345, ... 336
conviction under: offence and section to be specified in judgment, S. 367 358
judgment in alternative in accordance with, S. 367 ... ... *ib.*
destruction of libellous and other matter on conviction under certain sections of, S. 521 477
Tabular statement of certain offences under, Sch. II... 517

INDUCEMENT to confess not to be offered during police investigation, S. 163... 164
not to be offered to accused to make disclosure or withhold knowledge, S. 343 333

INFERENCE to be drawn by Court and jury from accused's giving false answers or refusing to answer, S. 342 330

INFORMATION of certain offences, Public to give, S. 44 71
respecting certain matters, certain persons bound to give, S. 45 73
credible, of cognizable offence; police may arrest without warrant, on receiving, S. 54 78
to Magistrate, search of place suspected to contain stolen property, forged documents, &c., upon, S. 98 108
as to likelihood of breach of the peace, order to show cause against security on receipt of, S. 107 114

PAGE

INFORMATION, issue of order to vagrants, &c., on receipt of, to show cause against security for good behaviour, S. 109 116
issue of order to habitual offenders on receipt of, to show cause against security for good behaviour, S. 110 117
received, order for showing cause under section 107, 109 or 110 to set forth substance of, S. 112 119
issue of warrant on receipt of, for arrest of party required to show cause under section 107, 109 or 110: substance of such information to be recorded by Magistrate, S. 114 .. 121
regarding apprehended breach of the peace or of good behaviour, inquiry as to truth of, S. 117 122
in respect of likely breach of the peace or of good behaviour, discharge of person implicated by, S. 119 125
power of High Court or Court of Session to call for further, in case of failure to comply with order for security under section 106 or 118, S. 123 126
passing conditional order for removal of nuisance on receipt of, S. 133 132
as to dispute concerning land, &c., likely to cause breach of peace; procedure on receipt of, S. 145 146
easements, &c.; procedure on receipt of, S. 147 152
of design to commit cognizable offence, S. 150 154
of police seizure of false weights and measures, to be given to Magistrate, S. 153 155
concerning commission of cognizable offence, treatment by police of, S. 154 ... 156
of non-cognizable offence, treatment by police, S. 155 ... 157
causing suspicion of cognizable offence, procedure by Police-officer receiving, S. 157 158
requiring upon, attendance of witnesses at police investigation held under Chapter xiv, S. 160 161
as to occurrence of sudden or unnatural death, procedure by police on receiving, S. 174 178
cognizance of offences upon, S. 191 201
required by jury, to be asked of Court by foreman, S. 280 ... 289
from a private person, proceedings void when Magistrate not empowered takes cognizance on, S. 530 487

INGRESS into place in view to effecting an arrest: procedure, when not obtainable, Ss. 47, 48 70
into closed place, to holder of search-warrant, S. 102 111

INHABITANTS of neighbourhood, person executing search-warrant to invite attendance of two or more, S. 103 ... *ib.*
police investigation into sudden or unnatural death, to be made in presence of two or more: such persons to sign Police officer's report, S. 174 178
summoning, to attend at police investigation into unnatural or sudden death, S. 175 ... 190

PAGE

INJUNCTION in nuisance cases, issue of, pending inquiry, S. 142 142
pending inquiry by jury, form of, Sch. V. 19 ... 610
INJURY to railway, canal or public propery, Public to assist Magistrates and Police in preventing, S. 42 70
to person or property, security for keeping the peace on conviction of threatening, S. 106... 112
excess, not to be inflicted in dispersing assembly by military force, S. 130 131
to health or comfort of the community, conditional order for suppression of trade, &c., causing. S. 133 132
to passers by, conditional order for removal, &c., of building likely to cause, *ib.* ... ... *ib.*
power issue injunction for prevention of, pending inquiry, in nuisance cases, S. 142 142
power of Magistrate to take steps for prevention of, pending inquiry, in nuisance-cases, *ib.* ... ... *ib.*
to persons lawfully employed, issue of order in urgent cases of nuisance in view to prevention of, S 144 143
to public property, prevention of, S 152 155
marks of, to be described in Police-officer's report on sudden or unnatural death, S. 174 178
INNOCENT PURCHASER, payment to, of money found on prisoner, S. 519 ... 476
INQUESTS, police to give intimation of sudden or unnatural death to nearest Magistrate empowered to hold, S. 174 178
reports of investigations into sudden or unnatural deaths in Madras and Bombay, when to be sent to nearest Magistrate empowered to hold, *ib.* ... ... *ib.*
Magistrates who are empowered to hold, *ib.* ... ... *ib.*
magisterial, proceedings in, may not be called for by superior Courts, S. 435 411
held by Magistrates not empowered; proceedings not vitiated, S. 529 485
INQUIRY, definition of, S. 4 40
regulation of place and mode of, S. 5 44
summons to produce document or other thing required for purposes of any, S. 94 106
procedure as to production of document in custody of Postal or Telegraph Department required for purposes of any, S. 95 ... *ib.*
issue of search-warrant, when required for purposes of any, S. 96... 107
by Magistrate, search of place suspected to contain stolen property, forged documents, &c., after, S. 98 108
prescribed in succeeding sections; detention of person arrested in view to prevention of breach of the peace, pending completion of, S. 108 116
as to truth of information regarding apprehended breach of the peace or of good behaviour: form of inquiry, S. 117 122
passing order for security for keeping the peace or for good behaviour, upon completion of, S. 118 124
under section 117; discharge after, S. 119 125
issue of injunction in nuisance-cases, pending, S, 142 ... 142
as to possession of land, &c., occasioning dispute, S. 145 146
into disputes concerning easements, &c. S. 147 152

PAGE

INQUIRY order permitting any disputed thing to be done on land, &c., not to be passed in certain cases unless the thing contested was done within three months before institution of, S. 147 152
local, into disputes concerning land, &c., S. 148 153
under Chapter xv, police investigation into cognizable cases limited to cases in which Court has power of, S. 156 158
preliminary, by Magistrate, into suspected cognizable offence, S. 159 160
power to record statements and confessions made at any time before commencement of, S. 164 167
record of confessions to be sent to Magistrate who is to hold, *ib.* ... ... *ib.*
Court may use police diaries at an, S. 172 176
by Magistrate into cause of sudden or unnatural death, S. 176 ... 190
INQUIRY OR TRIAL, PLACE OF,
ordinary, place of, S. 177 191
in place where act is done or where consequence ensues, S. 179 ... 192
place of, where act is an offence by reason of relation to another offence, S. 180 194
into offence of being a thug, belonging to a gang of dacoits, escape from custody, &c.; place of, S. 181 195
into criminal misappropriation and criminal breach of trust, place of, *ib.* ... ... *ib.*
into offence of stealing, place of, *ib.* ... ... *ib.*
place of; when scene of offence uncertain, when offence committed partly in one local area and partly in another, when offence containing, and when offence consists of several acts done in different local areas, S. 182 ... ... *ib.*
into offence committed on a journey, place of, S. 183 ... 196
into offences against Railway, Telegraph, Post-office and Arms laws, may be held in Presidency-towns, S. 184 197
place of, to be decided by High Court, in case of doubt, S. 185 ... *ib.*
into offence committed beyond local jurisdiction, S. 186 198
into offence committed beyond British India, power to direct copies of depositions and exhibits to be received in evidence at, S. 189... 200
INTO CASES TRIABLE BY COURT OF SESSION OR HIGH COURT,
INQUIRIES into case triable by Court of Session or High Court, procedure to be adopted in, S. 207 223
AND TRIALS, GENERAL PROVISIONS AS TO,
INQUIRY not to be stayed because accused does not understand the proceedings, S. 341 329
power to postpone or adjourn, S. 344 334
new, where Magistrate is succeeded by another, S. 350 342
into case triable by Court of dession or High Court, procedure on detention of offender attending Court during, S. 351 ... 343
INQUIRIES AND TRIALS, MODE OF TAKING AND RECORDING EVIDENCE IN,
in mufassal, manner of recording evidence in, indicated, S. 354 ... 344
INQUIRY, further, may be directed by Sessions Judge in reference to sentence submitted for confirmation, S. 380 366
Court hearing appeal against acquittal may direct further, S. 423... 405

PAGE

INQUIRY, by lower Court, power of Court of Session or District Magistrate revising proceedings to direct, S. 436 412
by District Magistrate or any subordinate Magistrate, power of Court of Session or District Magistrate revising proceedings to direct, S. 437 414
into truth of statement of person claiming to be dealt with as an European British subject, S. 453 423
validity of, when person who is not an European British subject is dealt with as such, S. 455 426
by High Court in reference to application from European British subject for order to produce his person, S. 457 427
by Magistrate, procedure on, when accused appears insane, S. 464 433
postponed on account of accused's unsoundness of mind, resumption of, S. 467 436
to proceed when accused who has been insane is capable of making his defence, S. 468 437
procedure when accused is sane at time of, but was not so when he committed the offence, S 469 ... ... *ib.*
Commission of, in cases of lunacy, S. 474 442
into guilt of person accused of non-bailable offence, taking bail or bond pending, S. 497 463
stay of, pending return of commission, S. 508 469
in wrong place, effect of holding, S. 531 487

INSANE, see *Lunatic.*

INSPECTING OFFICER, lunatic delivered to care of relative to be open to inspection by: certificate of such officer, how dealt with, S. 475 442

INSPECTION of place to find document or other thing, issue of search-warrant for: restriction of warrant, Ss. 96, 97 ... 107, 108
closed place liable to; persons in charge to allow search, S. 102... 111
of weights and measures by police, S. 153 155
commission, return thereto and depositions of witnesses to be open to, S. 507 469
of records of subordinate Courts, power of certain High Courts to make rules for, S. 553 508

INSPECTOR GENERAL OF PRISONS to visit lunatic prisoners confined in jail, and to make a special report to Local Government, S. 472 441
certificate by, that lunatic prisoner is capable of making his defence: procedure thereon; such certificate receivable as evidence, S. 473 441
certificate by, that lunatic prisoner might with safety be discharged, S. 474 ... 442

INSTRUMENT for counterfeiting coin or stamps, or for forging; search of place suspected to contain, S. 98 108
for weighing, inspection by police of, S. 153 155
false, seizure by police of, S. 153 155
by which injury was inflicted to be mentioned in Police-officer's report on sudden or unnatural death, S. 174 178

PAGE

INSULT with intent to provoke breach of the peace, may be tried summarily, S. 260 270
compoundable, S. 345 ... 336
nature of, to be recorded, in certain cases of contempt, S. 481 ... 448
INTERPRETATION of evidence to witness, S. 360... 352
to accused or his pleader, S. 361... ... 352
of documents, *ib.* 353
true, interpreter bound to state, S. 543 494
INTERROGATORIES, parties may forward, when witness to be examined on commission, S. 505 468
INTERRUPTION, nature of, to be recorded in certain cases of contempt, S. 481 448
INVESTIGATION, definition of, S. 40 40
summons to produce document or other thing required for purposes of any, S. 94 106
procedure as to production of document in custody of Postal or Telegraph Department required for purposes of any, S. 95 ... ... *ib.*
INVESTIGATIONS, POWER OF POLICE TO HOLD,
INVESTIGATION of non-cognizable cases by police, S. 155. 157
of cognizable cases by police, S. 156 158
case, proceedings of police in, not to be called in question, S. 156 ... ... *ib.*
procedure by police on suspicion of cognizable offence into which they may hold, S. 157 ... ... *ib.*
magisterial, into suspected cognizable offence, S. 159 ... 160
under Chapter xiv, power of Police-officer making an, to require attendance of witnesses, S. 160 161
examination of witnesses by Police-officer making an, S. 161 ... 162
statement of witnesses at, not to be signed or admitted in evidence, S. 162 *ib.*
voluntary confessions during, not to be prevented, S. 163 164
record of statements and confessions made during, S. 164 167
by police, search in connection with, by or under orders of Police-officer, S. 165 169
by police; procedure, when cannot be completed in twenty-four hours, S. 167 171
subordinate Police-officer holding, to submit report, S. 168 ... 173
by police, release of accused on completion of, S. 169 ... *ib.*
by police, case when to be sent to Magistrate on completion of, S. 170 ... ... *ib.*
Police-officer holding an, to keep a diary of his proceedings, S. 172 176
by police, to be completed without unnecessary delay, S. 173 177
superior officer of Police may direct further, *ib.* 178
by police into sudden or unnatural death S. 174 ... *ib.*
into sudden or unnatural deaths in Madras and Bombay may be made by heads of villages, S. 174... 179

PAGE

INVESTIGATION into sudden or unnatural death, police may summon persons to attend at, S. 175 190
power to direct previous local, before proceeding upon a complaint, S. 202 217
prior to proceedings being taken upon a complaint, powers of person not having magisterial or police powers holding, S. 202 218
IRREGULAR PROCEEDINGS
IRREGULARITIES which do not vitiate proceedings, S. 529 485
which render proceedings void, S. 530 486
effect of holding inquiry, trial or other proceeding in wrong place, S. 531 487
when irregular commitments may be validated, S. 532 ... 487
non-compliance with provisions of section 164 or 364 as to record of confessions and other statements, S. 533 ... 488
omission to ask whether person is an European British subject, S. 534 489
omission to frame charge, S. 535 ... ... *ib.*
trial by jury of offences triable with assessors, S. 536 ... *ib.*
trial with assessors of offences triable by jury, S. 536 ... 490
finding, sentence or order when reversible by reason of error, omission or irregularity in charge or proceedings, S. 537... 490
distress not illegal nor distrainer a trespasser because of defect of form in proceedings, S. 538 491

J.

JAIL manner of presenting appeal when appellants is in, S. 420 ... 403
Local Government may order accused acquitted on ground of lunacy to be confined in a, S. 471 440
order of release on execution of bond for appearance when accused is in, S. 500 465
accused may be committed to, on failure to find sufficient sureties when those accepted have proved insufficient, S. 501 ... *ib.*
power to order prisoner in, to be brought up for examination : duty of officer in charge of jail, S. 542 494
JAILOR, warrant to be lodged with, S. 385 371
JOINDER of charges, see *Charges.* ... ...
JOINT SESSIONS JUDGES, appointment of, S. 9 46
may pass any sentence authorized by law, confirmation of High Court required to sentences of death passed by, S. 31 60
cases to be tried by, S. 193 205
may hear appeals to Courts of Session, S. 409 ... 398
appeal from sentences of, S. 410 ... ... *ib.*
JOINTLY what persons may be charged, S. 239 253
trial of European British subject and person of another race jointly accused, S. 452 423
(not being European British subject) or American charged jointly with person of another race, S. 461 431

PAGE

JOURNEY from place of arrest to Magistrate's Court; period of detention of arrested persons, exclusive of time of, S. 61 87
place of trial of offence committed on a, S, 183 196
JUDGE senior, of a Chief Court, a "Chief Justice," S. 4 41
JUDGES of chartered High Courts, Justices of the Peace in virtue of their office, S. 25 57
suspension and removal of, S. 26 ... ... *ib.*
cognizance of offences against, not to be taken except with previous sanction of Government, &c. S. 197 210
Government may determine manner, &c, of prosecuting, S. 197 ... *ib.*
JUDGE, when, may be called as a witness, S. 294 *note* 301
duty of, in jury trials, S. 298 302
may require jury to retire for further consideration of verdict when not unanimous, S. 302 306
may question jury in order to ascertain their verdict, S. 303 ... 307
not bound to conform to opinions of assessors, S. 309 ... 312
JUDGES new sentence or order passed by High Court in place of sentence submitted for confirmation, to be signed by two, S. 377 ... 365
disagreeing in case submitted for confirmation of sentence; procedure, S. 378 366
of Appellate Court equally divided in opinion; procedure, S. 429 ... 409
JUDGE of High Court, reference by, S. 434 411
JUDGES of High Court in revision equally divided in opinion; procedure, S. 439 416
JUDGE presiding in a Court of Session not to have jurisdiction over European British subjects unless he is one himself, S. 444 ... 420
not to try contempts, &c., mentioned in section 195 when committed before himself, except in certain cases, S. 487 452
of High Court may try contempts, &c., mentioned in section 195, when committed before himself, S. 487 452
JUDGES, prosecution of: High Court may not transfer case, S. 526 ... 480
See *District Judge; Sessions Judge; Sessions Judge Additional; Joint Sessions Judge; Assistant Sessions Judge.*
JUDGMENT, any Court may alter charge before, S. 227 245
power to stop proceedings in summons-cases instituted without complaint, without pronouncing, S. 249 259
in summary trials where there is an appeal, what to contain, S. 264 277
to be the only record in summary trials where there is an appeal, S. 264 ... ... *ib.*
in summary trials, language of, S. 265 278
held by Benches, to be signed by each member of the Bench when prepared by a clerk, *ib.* .. .. *ib.*
in High Court, when to follow verdict of jury, S. 305 ... 308
in Court of Session, when to follow verdict of jury, S. 306 ... 309
passing, in jury trials before Court of Session, *ib.* ... ... *ib.*
not to be passed by Sessions Judge when he submits jury's verdict to High Court, S. 307 309
when to be given in cases tried with assessors: not necessarily to conform with assessors' opinions, S. 309 312

PAGE

JUDGMENT time of pronouncing: to be pronounced in presence of accused or his pleader, S. 366 357
language of: what to contain: to be dated and signed, S. 367 ... 358
to specify offence and section, and the punishment awarded, *ib.* *ib.*
in the alternative, *ib.* ... ... *ib.*
of acquittal, *ib.* ... ... *ib.*
to state reason why sentence of death is not passed when such a sentence is awardable, *ib.* ... ... *ib.*
need not be written in trials by jury, *ib.* ... ... *ib.*
Court not to alter its, S. 369 360
particulars to be recorded by Presidency Magistrate instead of a, S. 370 361
to be explained and copy or translation given to accused, S. 371 ... *ib.*
to be filed with record of proceedings: when not in language of Court, translation to be added to record S. 372 363
of Court of Session, copy of, to be sent to District Magistrate, S. 373 ... ... *ib.*
in case of difference of opinion as to case submitted to High Court for confirmation of sentence, S. 378 366
copy of, to accompany appeal, S. 379 ... ... *ib.*
rules of Chapter xxvi as to, to apply to judgments of certain Appellate Courts, S. 424 407
when Judges of Appellate Court are equally divided, S. 429 ... 409
on appeal, finality of, S. 430 410
may be given by Presidency Magistrate subject to reference to High Court, S. 432 410
Presidency Magistrate may take bail for appearance of accused before High Court for, *ib.* ... ... *ib.*
may be passed by High Court Judges reviewing case submitted by another Judge of the Court, S. 434 411
by Court of Session or High Court when accused is lunatic, S. 465 434
of acquittal on ground of lunacy: accused to be kept in safe custody, Ss. 470, 471 ... ... 437, 440
sentence or order when reversible by reason of error, omission or irregularity in, S. 537 490

JURISDICTION, special, conferred by other laws, S. 1 37
barred by former Acts, not restored, S. 2 38
original criminal, of High Courts; persons conducting prosecutions in, "Public Prosecutors", S. 4... 42
of subordinate mufassal Magistrates, when not specially defined, S. 12 46
held by Bombay Court of Petty Sessions, to be exercised by Bombay Presidency Magistrates, S. 20 55
combined sentences by certain Magistrates not to exceed twice their ordinary, S. 35 65
pursuit of offender into another, S. 58... 85
persons arrested to be taken before Magistrate having, S. 60... 86
service of summons outside local limits of Court's, S. 73 ... 93
proof of service of summons outside local limits of Court's, S. 74 ... ... *ib.*

PAGE

JURIDICTION, persons arrested by landholders, &c., under warrant, when to be taken before Magistrate having, S. 78 97
warrant of arrest forwarded to Magistrate for execution outside local limits of Court's, S. 83 ... 98
directed to Police-officer for execution outside local limits of Court's, S. 84... ... 99
procedure on execution of warrant of arrest in another Magistrate's, S. 85 .. .. *ib.*
endorsement of order for attachment of absconder's property in another, S 88 101
restoration of attached property on appearance of absconder before Magistrate having, S. 89 103
disposal of things found in execution of search-warrant at place beyond, S. 99 110
power of certain Magistrates to issue order to show cause against security to persons likely to commit breach of the peace beyond their, S. 107 ... 114
attachment and sale of moveable property either within or without Magistrate's, in view to recovering costs of removing nuisance, S. 140 140
information of police seizure of false weights and measures to be conveyed to Magistrate having, S. 153 155
within limits of station, police may investigate cognizable case which may be inquired into or tried by Court having, S. 156 158
power to issue process for offence committed beyond, S. 186 ... 198
offence committed beyond, when to be reported for orders of High Court, *ib.* ... ... *ib.*
warrant for levy of fine may be executed either within or without Court's, S. 387 373
application to European British subjects of all enactments conferring jurisdiction on Magistrates or the Court of Session, S. 459 431

JURORS, warrant not to be issued in lieu of summons for appearance of, S. 90 104
majority of, finding order for removal of nuisance to be reasonable; procedure, S. 139 139
or assessors, when to be chosen by High Courts and Courts of Session, S. 272 285
how to be chosen by High Courts and Courts of Session, S. 276 ... 287
names of, to be called, S. 277 288
accused to be asked if he objects to any juror, *ib.* ... ... *ib.*
objection to, may be taken by accused or by prosecutor, *ib.* ... *ib.*
objections to, on what grounds may be allowed, S. 278 ... ... *ib.*
decision of objections to, S. 279 289
against whom objections are allowed, supplying place of, *ib.* ... *ib.*
to appoint foreman, S. 280 289
foreman to ask any information of the Court that is required by, *ib.* 290
swearing of, S. 281 .. .. *ib.*

PAGE

JURORS ceasing to attend; procedure, S. 282 291
when may be examined, S. 294 301
in High Courts, exemption of salaried officers of Government from service as, S. 313 314
for High Court sessions, summoning, S. 315 315
ordinarily not to be summoned more than once in six months, *ib.* ... ... *ib.*
sessions outside Presidency-towns, summoning, S. 316 316
failing to attend at High Court, punishment of, S. 318 ... *ib.*
persons liable to serve as, S. 319 317
exemptions from service as, S. 320 ... ... *ib.*
special liability of persons in the Army to serve as, *ib.* ... *ib.*
and assessors for Court of Session, preparing list of: particulars to be given in list, S. 321 ... 318
revising list of, S. 324 319
for Sessions Court sessions, summoning, S. 326 320
ordinarily not to be summoned more than once in six months, S. 326 ... ... *ib.*
form of summons to, S. 328 321
when Government or Railway servants may be excused attendance as, S. 329 ... ... *ib.*
Court of Session may excuse attendance of any juror, S. 330 ... *ib.*
failing to attend at Court of Session, punishment of S. 332... ... *ib*
additional evidence for High Court in reference to sentence submitted for confirmation, not to be taken in presence of, S. 375 364
for Sessions Court in reference to sentence submitted for confirmation, when not to be taken in presence of, S. 380 366
for Appellate Court not to be taken in presence of, S. 428 409
for trial of Europeans (not being European British subjects) and Americans, summoning and empanelling, S. 462 432
summoning: form of precept to Magistrates Sch. V. 32 ... 618
form of summons to, Sch. V. 33 ... ... *ib.*
See *Military Jurors.*

JURORS' BOOK in High Courts, to be taken as containing correct list of jurors, S. 311 314
special jurors entered in, to hold privilege for the year only, *ib.* ... ... *ib.*

JURY to inquire into order for removal of nuisance, application for, S. 135 ... 136
for removal of nuisance; procedure, failing application for, S. 136 136
for removal of nuisance, procedure of Magistrate on receiving application for appointment of, S. 138 138

PAGE

JURY finding order for removal of nuisance to be reasonable; procedure, S. 139 139
for inquiry into propriety of order for removal of nuisance, procedure on failure to appoint, S. 141 ... 141
of order for removal of nuisance not returning verdict; procedure, *ib.* ... ... *ib.*
issue of injunction for immediate prevention of danger in nuisance cases, whether tried or not by, S. 142 142
trials before High Court to be by, S. 267 279
trials of cases transferred to a High Court may, if the Court so direct, be by, *ib.* 280
trials before Sessions Court to be by, or with assessors, S. 268... ... *ib.*
Local Government may order trials before Court of Session to be by, S. 269 ... ... *ib.*
accused charged with several offences before Court of Session, when to be tried by, for each offence, *ib.* ... ... *ib.*
Districts in Madras and Bengal in which certain offences tried by Court of Sessions shall be tried by, *ib. note* ... ... *ib.*
all trials by Court of Sessions in Assam or before Recorder of Rangoon or Moulmain shall be by, *ib. note* ... ... *ib.*
In the Sessions Court of Poona certain offences shall be tried by, *ib. note* ... ... *ib.*
trial by same, of several offenders in succession, S. 272 285
number of, in trials before High Court, S. 274 286
Courts of Session, *ib.* ... *ib*
constitution of, for trial before Court of Session of persons who are not Europeans or Americans, S. 275 287
foreman to be appointed by Court, failing his appointment by, S. 280... 289
discharge of, in case of sickness of prisoner, S. 283 291
when Court may direct, to return verdict of not guilty, S. 289 ... 297
view by, S. 293 300
no person to hold communication with, Ss. 293, 300 ... 301, 306
to attend at adjourned sitting, S. 295 302
for High Court, locking-up, S. 296 ... ... *ib.*
duty of, S. 299 305
retirement of, to consider verdict, S. 300 306
delivery of verdict of, S. 301 ... ... *ib.*
procedure where verdict not unanimous, S. 302 ... ... *ib.*
to return on each charge, S. 303 307
may be questioned by Judge in view to ascertainment of verdict, *ib.* ... *ib.*
may amend wrong verdict, S. 304 308
verdict of, in High Court, when to prevail, S. 305 ... ... *ib.*
in High Court when not unanimous, but six are of one opinion; foreman so to inform Judge, *ib.* ... ... *ib.*
in High Court, discharge of, when not unanimous, *ib.* ... ... *ib.*
verdict of, in Court of Session, when to prevail, S. 306 ... 309
procedure when Judge disagrees with verdict of, in trials before Court of Session, S. 307 ... ... *ib.*
JUSTICES OF THE PEACE for mufassal, appointment of, S. 22... ... 56
jurisdiction of, *ib. note* ... ... *ib.*

PAGE

JUSTICES OF THE PEACE for Presidency-towns, appointment of, S. 23 ... 56
present nominees to continue to hold office, S. 24 ... 57
certain officials, in virtue of their office, S. 25 ... *ib.*
suspension and removal of, S. 27 ... *ib.*
alone, may inquire into and try charges against European British subjects, S. 443 ... 419

L.

LAND, owners and occupiers of, and their agents, bound to report certain matters, S. 45 73
certain Collectors of revenue or rent of, bound to report certain matters, *ib.* ... ... *ib.*
"village" in section 45 includes "village-lands," *ib.* 74
direction of warrants of arrest to managers, &c., of, S. 78 ... 97
paying revenue to Government, mode of attaching absconder's, S. 88 101
LANDMARK, public; preventing removal of, or injury to, S. 152 155
LANGUAGE of charges, S. 221 241
of records and judgments in summary-trials, S. 265 ... 278
in which evidence is given or interpreted, objection to juror on ground of inability to understand, S. 278 289
of record of evidence in mufassal, S. 356 346
may be appointed by Local Government, S. 35 347
witness may demand interpretation of his evidence, S. 360 ... 352
evidence to be interpreted to accused or his pleader, S. 361 ... *ib.*
interpretation of documents, *ib.* 353
of record of accused's examination, S. 364 354
of Magistrate or Judge's memorandum of accused's examination, *ib.* *ib.*
of judgment, S. 367 358
of translation of judgment for accused, S. 371 361
translation of judgment when to be filed with the record, S. 372 363
of Court, power of Local Government to decide, S. 556 ... 512
LAWS, special or local, not affected, except as specially provided, S. 1 ... 37
repealed, Sch. I. 513
repealed; notifications, &c., under these, saved, S. 2 38
references in former, to Criminal Procedure Code, S. 3 39
LAW for regulation of ports and port-dues, to determine certain local limits of Presidency Magistrates' jurisdiction, S. 19 55
conferring jurisdiction on Bombay Court of Petty Sessions, Bombay Presidency Magistrates to exercise jurisdiction under, S. 20 ... ... *ib.*
regulating municipality at Bombay, Chief Magistrate at Bombay to hear appeals under, *ib.* ... ... *ib.*
conferring powers on Senior or Chief Magistrates, Chief Magistrates at Presidency-towns to exercise powers under, S. 21 ... ... *ib.*
other than Penal Code, Courts which may try offences under, S. 29 ... 59
on which defence intends to rely, to be stated, S. 290 299
by which jury are to be guided, to be laid down in Judge's charge, S. 297 302
Judge to decide questions of, in jury trials, S. 298 ... ... *ib.*
and fact, Judge may express to jury his opinion on any question of mixed, *ib.* 303

PAGE

LAW Judge to decide meaning of general indefinite expressions whose meaning is ascertained by, S. 299 305
and section under which accused is convicted, to be specified in judgment, S. 367 358
appeal admissible on matter of, both in jury and other trials, S. 418 ... 401
LEGALITY or extent of sentence, appeal from conviction on accused's own plea limited to, S. 412 399
LEGITIMATE child, or grandchild, any, of certain persons, an "European British subject," S. 4, ... 43
and illegetimate children, order for maintenance of, S. 488 ... 453
LETTER, request to District Magistrate to summon jurors or assessors, to be made by: such letter to specify names of persons to be summoned, S. 326 320
in Post-office, proceedings void when Magistrate not empowered issues search-warrant for, S. 530 486
See *Document.*
LEVY OF FINE, issue of warrant for, S. 386 371
effect of warrant for, S. 387 373
who may issue warrant for, S. 389 383
See *Fine.*
LIBELLOUS and other matter, destruction of, S. 521 477
LIFE, human, issue of order in urgent cases of nuisance in view to prevention of danger to. S. 144 143
power of Local Government to prolong currency of order under section 144 in cases of danger to, S. 144 143
LIST to be made of things found during search beyond jurisdiction; disposal of list, S. 99 ... 140
within jurisdiction disposal of list, S. 103 111
LITHOGRAPHY, included in "Writing" S. 4 40
LOCAL police to assist in executing warrant of arrest directed to Police-officer for execution outside jurisdiction, S. 84 99
inquiry into disputes concerning land, &c. S. 148 153
investigation into suspected cognizable offence, when may be dispensed with, S. 157 159
power to direct previous, before proceeding upon a complaint, S. 202 217
LOCAL AREA, highest Court of criminal appeal or revision for any, a "High Court", except in certain cases, S. 40 41
LOCAL AREAS of jurisdiction of subordinate mufassal Magistrates, definition of, S. 12 46
outside Presidency-towns, appointment of Special Magistrates for, S. 14 50
continuance of powers on transfer of officer from one to another local area under same Local Government, S. 40 ... 69
LOCAL GOVERNMENT, territories administered by each, called "Province," S. 4 40
officer appointed by, in that behalf, to be considered an "Advocate General," *ib.* 41
may declare any Police-officer present at a station to be an "officer in charge of a Police-station," *ib.* ... 42

PAGE

LOCAL GOVERNMENT may alter constitution of Sessions Divisions and of Districts, S. 7 45
may constitute and alter mufassal Subdivisions, S. 8 ... *ib.*
establishment of Courts of Session and appointment of Sessions Judges by, S. 9 46
appointment of District Magistrates by, S. 10... ... *ib.*
orders of, duties of officer succeeding to chief executive criminal administration of a district, pending, S. 11 ... *ib.*
appointment of subordinate mufassal Magistrates by; and definition of their territorial jurisdiction by, or under the control of, S. 12 ... ... *ib.*
power of, to place Magistrate in charge of Sub-division: delegation of this power, S. 13 94
appointment of Special Magistrates by, or under authority of, S. 14 50
appointment of Benches of Magistrates by, S. 15 ... *ib.*
may frame rules for guidance of Benches of Magistrates, or they may be framed by District Magistrate subject to its control, S. 16 52
appointment of Presidency Magistrates by, S. 18 ... 54
framing of rules for guidance of Presidency Magistrates, to have previous sanction of, S. 21 55
appointment of Justices of the Peace for the mufassal by, S. 22 56
appointment of Justices of the Peace for Presidency-towns by, S. 23 ... . *ib.*
present Justices of the Peace for Presidency-towns to be deemed to have been appointed by, S. 24 ... 57
suspension and removal of Judges and Magistrates by, S. 26 ... ... *ib.*
suspension and dismissal of Justices of the Peace by, S. 27 ... ... *ib.*
investiture of District Magistrate with special powers by, S. 30 59
investiture of Magistrates with additional powers by, or by District Magistrate under control of, S. 37 ... 69
mode of conferring powers by, S. 39 ... ... *ib.*
power of, to direct discontinuance of officers' powers on change of office, S. 40 ... . *ib.*
service of summons by an officer of issuing Court, subject to rules prescribed by, S. 68 90
authorization of Magistrate of the first class by, to make conditional orders for removal of nuisances, S. 133 132
to direct manner of publication of proclamation notifying order for removal of nuisance, S. 134 .. 136
authority of, to empower any Magistrate to prohibit repetition or continuance of nuisance, S. 143 ... 142
authority of, to empower any Magistrate to issue order absolute at once in urgent cases of nuisance, S. 144 143

PAGE

LOCAL GOVERNMENT power of, to prolong currency of orders made in urgent cases of nuisance, S. 144 143
power of, to prescribe form of book for entry of information concerning commission of offences, cognizable and non-cognizable, S. 154 156
power of, to direct submission of reports of suspected cognizable offences through superior officer of Police, S. 158 160
to prescribe form of report to be made to Magistrate on completion of police investigation, S. 173 ... 177
police to inquire into sudden or unnatural deaths, unless otherwise directed by rule prescribed by, S 174 178
may frame rules relative to police forwarding corpses to Medical officer for examination, *ib*.... ... 179
may appoint Medical Officer to receive corpses sent by police for examination, *ib*. ... ... *ib*.
may especially empower, or authorize District Magistrate to empower, any Magistrate to take cognizance of offences upon complaint or upon police report, S. 191 201
may empower any first or second class Magistrate to take cognizance of offences upon information received or upon his own knowledge or suspicion, *ib*. ... *ib*.
may invest Benches having second or third class powers with power to try certain offences summarily, S. 261 274
may allow clerk to prepare records or judgments of Benches in summary trials, S. 265 279
may order trials before Court of Session to be by jury, S. 269 280
to fix number of jury for trials before Courts of Session, S. 274 286
may exempt persons from liability to serve as jurors, S. 320 317
may appoint officer to make out with Sessions Judge list of jurors and assessors for Court of Session, S. 321 318
may appoint place of sittings in case of certain High Courts, S. 335 323
certain High Courts may hold sittings at any place within their appellate jurisdiction when approved by, *ib*. ... ... *ib*.
may appoint manner of taking down evidence in mufassal, and language of record, S. 357 347
to appoint manner of inflicting punishment of whipping in certain cases, S. 392 385
power of, to suspend or remit sentences, and to cancel such suspensions or remissions, S. 401 ... 391
power of, to commute sentences, S. 402 392
may direct appeal against acquittal, S. 417 ... 400
may empower Sub-divisional Magistrate to call for records of inferior Courts, S. 435 411

PAGE

LOCAL GOVERNMENT, Assistant Sessions Judges exercising jurisdiction over European British subjects, to be especially empowered by, S. 444 420
may appoint Medical Officer to examine accused persons who appear on an inquiry or trial to be of unsound mind, S. 464 433
may order confinement of accused when of unsound mind, S. 466 435
report to, on acquittal of accused on ground of lunacy: Local Government may pass orders as to confinement of accused, S. 471 440
special report as to mental condition of lunatic prisoners, to be made to, S. 472 441
powers of, when lunatic prisoner declared fit to be discharged, S. 474 442
may order lunatic to be delivered to care of relative or friend, and may appoint Inspecting Officer in such cases, S. 475 ... ... *ib.*
may direct that Sub-Registrar be deemed a Court, S. 483 449
power of, to appoint Public Prosecutors, S. 492 ... 458
officer so empowered by, may conduct prosecution without obtaining special permission from Court, S. 495 461
may empower Magistrate of the first class to sell property seized by the police, S. 524 479
may authorize District Magistrate to withdraw classes of cases, S. 528 484
may appoint place of confinement, S. 541 493
rules by, as to payment of expenses of complainant and witnesses, S. 544 495
previous sanction of, required to rules and forms prescribed by certain High Courts, S. 553 508
power of, to decide language of Courts, S. 556 ... 512
powers of, exercisable from time to time, S. 557 ... 513
additional powers with which mufassal Magistrates may be invested by Sch. IV 601

LOCAL LIMITS, definitions of, in former Acts, saved, S. 2 38
certain, of Presidency High Courts' jurisdiction, called "Presidency-town," S. 4 40
conferment of powers on Benches of Magistrates for certain, S 15 50
of Presidency Magistrates' jurisdiction, definition of, S. 19 ... 55

LUNATIC, who may compound on behalf of, S. 343 338
people deemed to be, wandering at large, S. 55 *note* 84
procedure by Magistrate in case of accused being, S. 464 433
provisions with regard to wandering, S. 464 *note* ... ... *ib.*
procedure by Court of Session or High Court in case of accused being, S. 465 434
release of, pending investigation or trial, S. 466 435
custody of, pending investigation or trial, *ib.* ... ... *ib.*

PAGE

LUNATIC rules for conveyance of, issued by Government of Bengal, S. 466 *note* 435
procedure with regard to persons indicted under 14 and 15 Vic. c. 81 being, *ib.* 436
resumption of inquiry or trial postponed on account of accused being, S. 467 436
procedure on accused being brought before Court after postponement, S. 468 437
procedure when accused is sane at time of inquiry or trial, S. 469 ... *ib.*
judgment of acquittal, S. 470 ... ... *ib.*
accused, when acquitted on ground of lunacy, to be kept in safe custody, S. 471 440
prisoners to be visited, and report made to Local Government as to their mental condition, S. 472 441
procedure on Inspector-General of Prisons or visitors of Lunatic Asylum certifying that prisoner is capable of making his defence, S. 473 ... ... *ib.*
when lunatic prisoner is declared fit to be discharged, Local Government may order his discharge, continued detention, or transfer to public Lunatic Asylum, appointing commission in the latter case, S. 474 ... 442
delivery of, to care of relative or friend: appointment of inspecting officer, S. 475 ... ... *ib.*

LUNATIC ASYLUM, Local Government may order accused to be confirmed in, before trial: Magistrate or Court to give effect to such order, S. 466 435
Local Government may order accused acquitted on ground of lunacy to be confined in, S. 471 440
visitors of, to visit lunatic prisoners and to make a special report to Local Government, S. 472 ... 441

M.

MADRAS town, Commissioner of Police, and the police in, not affected by Code, except as specially provided, S. 1 38
High Court, local limits of certain jurisdiction of "Presidency-town," S. 4 40
High Court, a "High Court" as regards proceedings against European British subjects, *ib.* 41
town, appointment of Justices of the Peace for, S. 23 56
High Court may issue directions of the nature of a *habeas corpus*, and may frame rules, S. 491 457

MAGISTRATE of a division of a district: corresponding expression in Code, S. 3 39
of Police, corresponding expression in Code, *ib.* ... *ib.*
allegation made to a, with a view to proceedings, a "complaint," S. 4 40
an inquiry by a, under Code, an "inquiry," *ib.* ... ... *ib.*
existing Sub-divisions now usually put under the charge of a, maintained, S. 8... 45
Cantonment, deemed a Magistrate in charge of a Division (Sub-Division), S. 13 *note* 49
Special, appointment of, and conferment of powers on, S. 14 ... 50

PAGE

MAGISTRATES of the class to which the highest class Magistrate sitting with them belongs, Benches of Magistrates to be deemed for purposes of Code to be, S. 15 50
subordination of all, to District Magistrate, S. 17 53
subordination of certain, to Sub-divisional Magistrate, subject to the general control of District Magistrate, *ib.* ... 54
not subordinate to Sessions Judge, *ib.* ... ... *ib.*
suspension and removal of, S. 26 57

MAGISTRATE, investiture of District Magistrate with power to try as a, all offences not punishable with death, S. 30 59

MAGISTRATES, Courts of, sentences which may be passed by different, S. 32 ... 61
may pass combined sentences, *ib.* ... ... *ib.*
may award imprisonment in default of payment of fine, S. 33 62

MAGISTRATE, imprisonment in default of fine may be in addition to substantive sentence for maximum term awardable by, *ib.* ... *ib.*
term of imprisonment awarded in default of payment of fine, not to exceed powers of, *ib.* ... ... *ib.*
term of imprisonment awarded in default of payment of fine not to exceed, in certain cases, one-fourth of total term without fine awardable by, *ib.* ... ... *ib.*
not acting under section 34, maximum punishment awardable on simultaneous conviction of several offences before a, S. 35 ... 65
ordinary powers of, S. 36 68
additional powers of, S. 37 69

AID AND INFORMATION TO,
Public when to assist, S. 42 70
Public to give information of certain offences to nearest, S. 44 71
certain persons bound to report certain matters to nearest, S. 45 73
arrest by police without warrant or without order by a, S. 54... 78
committer of non-cognizable offence refusing to give name and residence, to be sent, if arrested, to nearest, S. 57 ... 85
having jurisdiction, persons arrested without warrant to be taken before, S. 60 86
period of detention in custody, of persons arrested without warrant, in absence of special order of, S. 61 ... 87
power of, to authorize detention by police, S. 61 *note* ... 88
discharge of persons arrested without warrant, under special order of a, S. 63 89
arrest of person committing offence in presence of, S. 65 ... *ib.*
arrest by, or in presence of, *ib.* ... ... *ib.*
in another jurisdiction, summons when to be sent for service to, S. 73 93
persons arrested by landholders, &c., under warrant, when to be taken before, S. 78 97
warrant of arrest for execution outside jurisdiction forwarded to, S. 83 98
endorsement by, or warrant of arrest directed to Police-officer for execution outside jurisdiction, S. 84 99

PAGE

MAGISTRATE, outside jurisdiction, when person arrested under warrant to be taken before, S. 85 99
procedure of, when person arrested under warrant is taken before him, S. 86 ... 100
having jurisdiction, restoration of attached property on appearance of absconder before, S. 89 103
other than District or Chief Presidency Magistrate, procedure as to production of document in custody of Postal Department when required by, S. 95 106
other than District Magistrate, not to grant warrant to search for document in custody of Postal or Telegraph Department, S. 96 107
taking stolen property, forged documents, &c., and persons implicated, before, S. 98 108
to whom things found in execution of search-warrant beyond jurisdiction are to be sent, S. 99 110
persons wrongfully confined, and discovered under search-warrant, to be taken before a, S. 100 ... ... *ib.*
power of, to direct search in his presence, S. 105 ... 112
empowered to proceed under section 107, transfer to, of person arrested as likely to commit breach of the peace, S. 108 ... 116
not empowered to proceed under section 107, procedure of, on apprehension of breach of the peace, S. 108 116
acting under section 107, 109 or 110 contents of order to be made by, S. 112 ... 119
procedure by, when party not present in Court, S. 114 ... 121
power of, to dispense with personal attendance of person called upon to show cause, S. 116 122
appearance or production before, of party summoned under section 114 inquiry as to truth of information on, S. 117 .. *ib.*
power of, after inquiry, to order execution of bond for keeping the peace or for good behaviour, S. 118 124
discharge by, after inquiry under section 117, S. 119 125
power of, to reject sureties offered to bond for good behaviour: reasons to be recorded, S. 122... 126
when to lay before Court of Session proceedings in case of failure to comply with order for security under section 106 or 108, S. 123 ... ... *ib.*
discretion of, as to kind of imprisonment awardable on failure to give security for good behaviour, S. 123 127
subordinate, release of person imprisoned by, for failure to give security, S. 124 ... ... *ib.*
assembly to disperse on command of, S. 127 129
use of civil force by, for dispersion of assembly, S. 128 ... 130
of highest rank who is present, power of, to use military force for dispersion of assembly, S. 129 ... ... *ib.*
procedure by, on determining to use military force for dispersion of assembly, S. 130 131
dispersion of assemblies by military officers in absence of instructions from a, S. 131 ... ... *ib.*

PAGE

MAGISTRATE, protection of, against prosecution for acts done under Chapter ix, S. 132 131
acting under Chapter ix in good faith, to be deemed as not having thereby committed an offence, *ib.* 132
issuing order for removal of nuisance, application to, for appointment of jury, S. 135 136
procedure by, on party showing cause against order for removal of nuisance, S. 137 137
procedure by, on receiving application for jury to inquire into order for removal of nuisance, S. 138 138
foreman and one-half of remaining members of jury in case of order for removal of nuisance, to be nominated by, *ib.* ... *ib.*
acceptance by, of modification by jury in order for removal of nuisance. S. 139 139
to make order for removal of nuisance absolute, on jury finding it reasonable, *ib.* ... ... *ib.*
procedure by, on order for removal of nuisance being made absolute, S. 140 140
outside jurisdiction, endorsement by, of order for attachment and sale of property in view to recovering costs of removing nuisance, *ib.* ... ... *ib.*
discretion of, as to allowing additional time for return of verdict by jury inquiring into order for removal of nuisance, S. 141 141
power of, to pass order on failure to appoint jury for inquiring into propriety of order for removing nuisance, or on neglect of jury to return verdict, *ib.* ... ... *ib.*
power of, to issue injunction pending inquiry in nuisance case, S. 142 142
power of, to act on failure to obey an injunction pending inquiry in nuisance case, *ib.* ... ... *ib.*
no suit to lie in respect of thing done in good faith by, under section *ib.* ... ... *ib.*
specially empowered, authority of, to prohibit repetition or continuance of nuisance, S. 143 141
specially empowered, authority of, to issue order absolute at once, in urgent cases of nuisance, S. 144 143
any, may rescind or alter any order made by himself or any other, in urgent case of nuisance, *ib.* ... ... *ib.*
subordinate, deputation of, to conduct local inquiry into dispute concerning land, &c.: his report receivable as evidence, S. 148 153
arrest without orders from in view to preventing cognizable offence, S. 151 155
having jurisdiction information of police seizure of false weights and measures, to be given to, S. 153 ... ... *ib.*
police to refer complaints in non-cognizable cases to, S. 155 ... 157
order of, not necessary to investigation of cognizable case by police, S. 156 158
empowered to take cognizance on a police report of suspected cognizable offence to, S. 157 ... ... *ib.*

PAGE

MAGISTRATE, transmission of report of suspected cognizable offence to, by superior officer of Police, S. 158 160
power of, to hold investigation as to suspected cognizable offence, S. 159 .. .. *ib.*
subordinate, deputation of, to hold investigation as to suspected cognizable offence, *ib.* ... ... *ib.*
not being a Police-officer, power of, to record statements and confessions before inquiry or trial, S. 164 167
who is to inquire into or try case, confessions before inquiry or trial to be sent to, *ib.* ... . *ib.*
nearest, forwarding accused and extract from diary to, when police investigation cannot be completed in twenty-four hours, S. 167 171
powers of, as to authorizing detention of accused persons forwarded under section, *ib.* ... ... *ib.*
having jurisdiction, Magistrate when to send accused persons forwarded under section 167, *ib.* ... ... *ib.*
authorizing detention in police custody, to record his reasons, *ib.* ... ... *ib.*
other than District or Sub-divisional, to forward to his superior copy of order authorizing detention of accused persons, *ib.* *ib.*
release of accused when police investigation does not disclose sufficient evidence to justify his being sent to a, S. 169 ... 173
having jurisdiction to take cognizance on a police report, bond for appearance before, of person released on completion of police investigation, *ib* ... ... *ib.*
empowered to take cognizance upon a police report, transmission of accused to, on completion of police investigation, S. 170 ... ... *ib.*
empowered to take cognizance upon a police report, taking security for appearance of accused on a fixed day before, on completion of police investigation, *ib.* ... ... *ib.*
transmission of weapons, &c., to, on completion of police investigation, *ib.*... 174
taking bond, on completion of police investigation, for appearance of complainants and witnesses before, *ib.* ... *ib.*
original bond of complainants and witnesses to be sent with Police-officer's report to, *ib.*... ... ... *ib.*
may detain recusant complainant or witness in custody, S. 171 175
having jurisdiction to take cognizance on a police report, report of every police investigation to be forwarded to a, S. 173 ... 177
superior officer of Police may direct further investigation, pending orders of, *ib.* 178
to pass orders on receipt of report showing that accused has been released on his bond after police investigation, *ib.* ... *ib.*
empowered to hold inquests, police to give intimation of sudden or unnatural death to nearest, S. 174 ... ... *ib.*
empowered to hold inquests, reports of investigations into sudden or unnatural deaths in Madras and Bombay, when to be sent to nearest, *ib.* 179
what, may hold inquests, *ib.* ... ... *ib.*

PAGE

MAGISTRATE, empowered to hold inquests, nearest, to hold inquiry into cause of death of person dying in police custody, S. 176 190
power of, to disinter corpse, *ib.* 191
having jurisdiction, person arrested for offence committed beyond jurisdiction to be sent to, S. 186 198
subordinate, procedure by, on arrest of person who has committed an offence in another jurisdiction, S. 187. ... 199
having jurisdiction, person arrested under warrant issued by subordinate Magistrate for offence committed beyond jurisdiction, when to be sent to, *ib.* ... ... *ib.*
specially empowered, any, cognizance of offences by, S. 191 ... 201
taking cognizance upon complaint, procedure by, S. 200 ... 215
not empowered to entertain complaint, to return it, when in writing, for presentation to proper tribunal, S. 201 ... 217
subordinate, power to direct, to hold local investigation prior to proceedings being taken upon a complaint, S. 202 ... *ib.*
when may dismiss a complaint, S. 203 218
taking cognizance of a case ; when to issue process, S. 204 ... 220
may allow accused to appear by pleader, and may afterwards direct and enforce his personal attendance, S. 205 ... 222
so empowered by Local Government, may commit to Court of Session and High Court, S. 206 223
to hear complainant and take evidence, inquiry, S. 208 ... *ib.*
may call for further evidence, *ib.* ... ... *ib.*
to issue process for further evidence when desired by complainant or accused, *ib.* 224
Calcutta High Court regarding examination of witness by, *ib. note* ... ... *ib.*
when to discharge accused on inquiry, S. 209 226
accused not to be discharged on inquiry into sessions-case if Magistrate thinks he should be placed on trial before a, *ib.* ... ... *ib.*
to record reasons when discharging accused at an early stage of an inquiry, *ib.* ... ... *ib.*
examination of accused by, *ib. note* 227
discretion of, to allow accused to give in additional list of witnesses for his trial, S. 211 229
may examine witnesses named in additional list given by accused, S. 212 ... ... *ib.*
when to make order of commitment to Court of Session or High Court, S. 213 ... ... *ib.*
other than Presidency or first class Magistrate; power of, with sanction of District Magistrate, to stop proceedings in summons-cases when no complainant, S. 249 259
committing; examination of accused before, to be read as evidence, S. 287 292
of evidence of witnesses taken before, when admissible, S. 288 294
having authority from District Magistrate, may tender pardon, S. 337 323

PAGE

MAGISTRATES who must record reasons for tendering a pardon, S. 337 ... 324
tendering pardon not to try case, *ib.* ... ... *ib.*
MAGISTRATE, committing, may be ordered to tender pardon after commitment, S. 338 327
not to remand accused to custody for more than fifteen days on postponement or adjournment, S. 344 334
in mufassal: when to stay proceedings and submit case; Magistrate to whom case to be submitted; procedure by latter Magistrate, S. 346 338
procedure by, which after commencement of inquiry or trial he finds case should be committed, S. 347 339
conviction of commitment on evidence partly recorded by one and partly another, S. 350 342
mufassal, manner of recording evidence in inquiries by or trials before, indicated, S. 354 344
record of evidence in summons-cases tried by, S. 355 345
other cases tried by, S. 356 346
discretion of, as to recording evidence in summons-cases, S. 358 349
taking additional evidence for Appellate Court, S. 428... ... 409
MAGISTRATES who may inquire into and try charges against European British subjects, S. 443 419
MAGISTRATE, any, may take cognizance of offences committed by European British subjects, but must make process returnable before a Magistrate having jurisdiction, S. 445 420
mufassal, sentences which may be passed on European British subjects by, S. 446 421
report by, when Sessions Judge is not an European British subject, S. 450 422
procedure by, on accused claiming to be dealt with as an European British subject, S. 453 423
when to ask accused whether he is an European British subject, S. 454 425
procedure by, when accused appears at inquiry or trial to be insane, 464 433
not to try contempts, &c., mentioned in section 195, when committed before himself, except in certain cases: but Magistrate empowered to commit may exercise that power, S. 487 452
any, may enforce order of maintenance, S. 490 457
any, may permit certain persons to conduct prosecution, S. 495 461
deposition of medical witness taken and attested by a, may be given in evidence, S. 509 469
procedure by, in reference to property seized by police, Ss. 523, 525 ... ... 478, 480
when to deliver offenders to military authorities, S. 549 ... 507
to apprehend offenders on requisition of military authorities, S. 549 507
MAGISTRATES, mufassal, ordinary powers of, Sch. III. 600-*a*
additional powers with which they may be invested, Sch. IV. 601
MAGISTRATE OF THE FIRST CLASS, corresponding expression in former Acts, S. 3 39

PAGE

MAGISTRATES OF THE FIRST CLASS, Courts of, one class of Criminal Courts, S. 6 44
District Magistrates to be, S. 10 ... 46
mufassal, appointment of, and definition of their territorial jurisdiction, S. 12 ... *ib.*

MAGISTRATE OF THE FIRST CLASS, power to place, in charge of Sub-division, S. 13 49
conferment of powers of, on Special Magistrates, S. 14 50
conferment of powers of, on Benches of Magistrates, S. 15 ... ... *ib.*
limit of powers of, in trials of offences under laws other than the Penal Code, S. 29 59
Court of, sentences which may be passed by, S. 32 61
ordinary powers of, S. 36 68
additional powers of, S. 37 ... 69
authorization by, of search of place suspected to contain stolen property, forged document, &c S. 98 108
may issue search-warrant for discovery of persons wrongfully confined, S. 100 110
power of Court of, to require security for keeping the peace on conviction, S. 106 112
power of, to issue order to show cause against security for keeping the peace before conviction, S. 107 ... 114
power of, to issue order to vagrants and suspected persons to show cause against security for good behaviour, S. 109 ... 116
power of, to issue order to habitual offenders to show cause against security for good behaviour, S. 110 .. 117
discharge by, of sureties to bond for peaceable conduct or for good behaviour, S. 126 128
specially empowered, conditional order by, for removal of nuisance, S. 133 ... 132
order requiring appearance before any, of person causing nuisance, *ib.* ... 133
order made by, under section 133, not to be called in question by Civil Courts, *ib.* *ib.*
procedure, by, on receipt of information as to dispute concerning land, &c., which is likely to cause breach of peace, S. 145 146
attachment by, of land occasioning dispute, S. 146 151
procedure by, in reference to disputes concerning easements, &c., S. 147 ... 152

PAGE

MAGISTRATE OF THE FIRST CLASS, order to police by, for investigation of non-cognizable case, S. 155 ... 157
specially empowered, to issue process for offence committed beyond his local jurisdiction, S. 186 198
specially empowered, cognizance of offences by, S. 191 201
specially empowered, may transfer case after taking cognizance, S. 192 ... 203
power of, to direct local investigation before proceeding upon a complaint, S. 202 217
may commit to Court of Session and High Court, S. 206 223
power of, to stop proceedings in summons-cases when no complainant, S. 249 ... 259
specially empowered, may try summarily: what offences he may so try, S. 260 ... 270
holding inquiry, may tender pardon, S. 337 323
record of evidence in trials of certain offences by, S. 355 345
discretion as to manner of recording evidence in trials of certain offences by, S. 358 349
transfer of appeals to, S. 407 ... 397
whether acting under section 349 or not; appeal from sentence of, S. 408 ... *ib.*
no appeal from certain sentences by, except in case of combination of punishments, Ss. 413, 415 399, 400
no Magistrate in mufassal, other than, to have jurisdiction over European British subjects, S. 443 419
may pass orders for maintenance of wives and children, and appoint persons to receive payments; and may enforce such orders, S. 488 453
may alter rate of allowance sanctioned under section 488, S. 489 ... 456
commission for examination of witness may be directed to: his duty on receiving same; District Magistrate may appoint Magistrate of the first class to execute commission, S. 503 ... 466
may proceed in any case of forfeiture of bond, S. 514 473
specially empowered, property seized by police may be sold under orders of, S. 524 479

PAGE

MAGISTRATE OF THE SECOND CLASS, power to place, in charge of Sub-division, S. 13 49
conferment of powers of, on Special Magistrates, S. 14 50
conferment of powers of, on Benches of Magistrates, S. 15 ... ... *ib.*
limit of, in trials of offences under laws other than the Penal Code, S. 29 ... 59
Court of, sentences which may be passed by, S. 32 61
ordinary powers of, S. 36 68
additional powers of, S. 37 69
order requiring person causing nuisance to appear before any, S. 133 ... 132
order to police by, for investigation of non-cognizable case, S. 155 157
specially empowered, cognizance of offences by S. 191 201
power of, to direct local investigation before proceeding upon a complaint, S. 202 217
procedure by, when he cannot pass sentence sufficiently severe, S. 349 ... 341
record of evidence in trials of certain offences by, S. 355 345
discretion as to manner of recording evidence in trials of certain offences by, S. 358 349
submission of conviction by, to district Magistrate, S. 369 *note* ... 360
appeal from sentence of, S. 406 ... 296

MAGISTRATES OF THE THIRD CLASS Courts, of, one class of Criminal Courts, S. 6 44
mufassal, appointment of, and definition of their territorial jurisdiction, S. 12 ... 46
conferment of powers of, on Special Magistrates, S. 14 50
conferment of powers of, on Benches of Magistrates, S. 15 ... ... *ib.*
limit of powers of, in trials of offences under laws other than the Penal Code, S. 29 59
Court of, sentences which may be passed by, S. 32 61
ordinary powers of, S. 36 ... 68
additional powers of, S. 37 69
procedure by, when he cannot pass sentence sufficiently severe, S. 349 ... 341
submission of conviction by, to District Magistrate, S. 369 *note* ... 360
appeal from sentence of, S. 406 ... 296

PAGE

MAINTENANCE OF WIVES AND CHILDREN
Magistrates who may pass order, S. 488 453
allowance payable from date of order, *ib.* ... ... *ib.*
mode of enforcing order, *ib.* ... ... *ib.*
power to make order notwithstanding offer of maintenance on restoration of conjugal intercourse, *ib.* ... ... *ib.*
wife when not entitled to, *ib.* ... ... *ib.*
alteration in allowance, S. 489 456
copy of order to be given to person in whose favour it is made . order enforceable by any Magistrate, S. 490 ... 457
proceedings void when order made by a Magistrate not empowered, S. 530 486
form of warrant of imprisonment on failure to pay, Sch. V 40 621
to enforce payment of, by distress and sale, Sch. V. 41 ... ... *ib.*
MARKS used for navigation; preventing removal of, or injury to, S. 152 ... 155
of injury, to be described in Police-officer's report on sudden or unnatural death, S. 174 178
MARRIAGE, cognizance of offences against, not to be taken except on complaint made by aggrieved person, S. 198 214
no person to be convicted under section 238 of an offence against, unless complaint has been made by an aggrieved party, S. 238 252
MATERIALS for counterfeiting coin or stamps, or for forging; search of place suspected to contain, S. 98 108
MEANING of documents given in evidence in jury trials, to be decided by Judge, S. 298 302
of technical terms, to be determined by jury, S. 299 303
of general indefinite expressions to be decided by Judge when their meaning is ascertained by law, *ib.* ... ... *ib.*
MEDICAL OFFICER appointed by Local Government, police may forward corpse for examination to, S. 174 178
examination of lunatic accused by, S. 464 433
MEDICAL OFFICERS, commission of inquiry in cases of lunacy to consist of a Judicial Officer and two, S. 474 442
MEDICAL PROFESSION, persons openly and constantly practising the, exempted from serving as jurors and assessors, S. 320... ... 317
MEDICAL WITNESS, deposition of, may be given in evidence, or Court may call witness, S. 509 469
MEMBERS, ordinary, of Governor General's Council, Justices of the Peace in virtue of their office, S. 25 57
MEMORANDUM to be attached to record of confession made before inquiry or trial, S. 164 167
of substance of evidence in mufassal summons-cases and in trials of certain offences by first and second class Magistrates, S. 355 345
of substance of evidence in other cases in mufassal, S. 356 ... 346
of witness' denial of correctness of his evidence, S. 360 ... 352
of accused's examination when mufassal Magistrate or Judge does not record the examination himself, S. 364 ... 354
MERCHANDIZE, conditional order prohibiting keeping of noxious, S. 133 ... 132
MILITARY AUTHORITIES, delivery of offender to, S. 549 507

PAGE

MILITARY AUTHORITIES, Magistrate to apprehend offenders on requisition of, S. 549 507
MILITARY BAZARS at cantonments and stations occupied by Madras and Bombay troops, S. 1 38
MILITARY FORCE, dispersion of assembly by, S. 129 130
procedure in reference to dispersion of assembly by, S. 130 131
dispersion of assembly by, without instructions from a Magistrate, S 131 ... ... *ib.*
MILITARY JURORS for High Court sessions, summoning, S. 317 ... 316
See *Jurors.*
MINOR, bond for keeping the peace or for good behaviour, in case of, to be executed only by the sureties, S. 118 124
who may compound on behalf of, S. 345 338
MISCHIEF under Penal Code, section 427, may be tried summarily, S. 260 ... 270
when compoundable, S. 345 336
MISDIRECTION, jury's verdict may be altered or reversed on appeal, only on ground of, S. 423 405
in charge to jury; finding, sentence or order when reversible by reason of, S. 537 490
MISTAKE, wrong verdict delivered by; amendment of, S. 304 308
insufficient sureties accepted by, S. 501 465
MONEY found on prisoner, payment to innocent purchaser of, S. 519... ... 476
MONEYS ordered to be paid, recoverable as fines, S. 547 505
MOTION for setting aside or modifying order for removal of nuisance, S. 133 132
applications for exercise of High Courts' power of transfer, to be made by, S. 526 480
MUKHTAR appointed by Court to act, a "Pleader", S. 4 42
MURDER, circular issued for evidence of Bengal Police in cases of suspected, S. 174 *note* 181
offence of being a thug and committing, where triable, S. 181 ... 195
offence of dacoity with, where triable, S. 182 ... ... *ib.*
charges of, Ss. 221, Ill. 223, Ill. 225, Ill. 239, Ill... 240, 243, 244, 254
and robbery, charge of, S. 239, Ill. ... ... *ib.*
and culpable homicide, forms of charge of, Sch. V. 28 615

N.

NAME, refusal by committer of non-cognizable offence to give, S. 57 ... 85
endorsement on warrant of arrest of executing officer's, S. 79 97
of Magistrate or Commissioner of Police in whose jurisdiction warrant of arrest is to be executed, endorsement of, S. 83 98
of Magistrate or Police-officer in whose jurisdiction warrant of arrest directed to Police-officer is to be executed, endorsement of, S. 84 ... 99
investigation into suspected cognizable offence may be dispensed with if case not serious and offender is known by, S. 157 159
specific, of offence, sufficient description for charge S. 221 240
offence how stated in charge when it has no specific, *ib.* ... *ib.*
of complainant and accused to be entered in record of summary trial, S. 263 275
of complainant and accused to be recorded in Presidency Magistrate's judgment, S. 370 361

PAGE

NARRATIVE FORM, evidence in certain cases in mufassal to be taken down in, S. 359 349
in Presidency Magistrates' Courts to be taken down in, S. 362 358
NATIVE STATES, in alliance with Her Majesty, European British subjects may be tried for offences committed in, S. 188 ... 199
in which High Courts exercise criminal jurisdiction over European British subjects, S. 488 *note* 428
commission to whom directed when witnesses reside in, S. 503 466
NATURALIZED, in certain places, certain persons, "European British subjects," S. 4 43
NAVIGATION, preventing removal of, or injury to, mark used for, S. 152 ... 155
NAVY, power of police to arrest without warrant persons suspected of being deserters from the, S. 53 78
NEW TRIAL, when may be directed, on alteration of charge, S. 229 246
where Magistrate is succeeded by another, S. 350 ... 342
High Court may order, when sentence is submitted for confirmation, S. 376 365
Sessions Judge ditto ditto, S. 388... ... 366
NON-BAILABLE OFFENCE, definition of, S. 4 43
certain persons bound to give information regarding commission of, or intention to commit, S. 45 ... 73
direction of warrants to landholders, &c., for arrest of persons accused of, S. 78 97
when bail may be taken in case of: bail or bond to be taken when further inquiry into guilt of accused is necessary: arrest of accused after taking such bail or bond, S. 497 463
NON-BAILABLE AND COGNIZABLE OFFENCES, arrest by private persons committing, S. 59 86
NON-COGNIZABLE CASE, definition of, S. 4 43
investigation of, by police, S. 155 157
NON-COGNIZABLE OFFENCE, definition of, S. 4 43
refusal to give name and residence by committer of, S. 57 85
person suspected of, how to be treated by police, *ib.* ... ... *ib.*
police cannot investigate, without special order, *ib. note* ... ... *ib.*
procedure by police on receipt of information concerning commission of, S. 155 157
NORTH-WESTERN PROVINCES High Court, a "High Court" as regards proceedings against European British subjects, S. 4 41
NOTICE of proclamation, restoration of attached property on absconder's proving insufficient, S. 89 103
of order for removal of nuisance, affixing, S. 140 140
to be given of order for removal of nuisance being made absolute, S. 144 143

PAGE

NOTICE when cannot be served in due time: order in urgent cases of nuisance may be passed *ex-parte*, S. 144 143
of transfer of case to be given to complainants and witnesses at police investigation, S. 170 173
as to hearing objections to list of jurors and assessors for Court of Session, issue of, S. 323 319
of High Court sittings, S. 335 323
to be given of time of pronouncing judgment, S. 366... ... 357
of appeal, S. 422... 405
to Public Prosecutor of application for transfer of case: twenty-four hours to elapse between such notice and hearing, S. 526 ... 481

NOTIFICATION under former Acts, saved, S. 2 38
appointment of Justices of the Peace for the mufassal to be by, S. 22 56
appointment of Justices of the Peace for the Presidency-towns to be by, S. 23 ... ... *ib.*
of arrester's authority and purpose, breaking open premises in order to effect an arrest, after, S. 48 76
of substance of warrant of arrest, S. 80 98
by proclamation, of order for removal of nuisance, failing service, S. 134 136
of prolongation of currency of orders made in urgent cases of nuisance, S. 144 143
of commitment to Court of Session or High Court, when to be made, S. 218 234
of transfer of case by Governor General in Council, S. 527 ... 484

NUISANCES, PUBLIC
conditional order for removal of, S. 133 132
prohibition of repetition or continuance of, S. 143 ... 142
proceedings in certain cases of, may not be called for by superior Courts, S. 435 411
void when Magistrate not empowered makes orders under sections 133, 143 or 144 as to, S. 530 ... 486
forms of orders &c. connected with, Sch. V. 16—21 ... 609—611

O.

OATH, examination by police is not on, S. 161 *note* 162
complaint to be examined upon, S. 200 215
examination of complaint upon, discretionary with Presidency Magistrate, *ib.* ... ... *ib.*
not to be administered to accused, S. 342 331

OBJECTION to certain thing being done upon land, &c., causing dispute; order in case of, S. 147 152
trial by same jury or assessors of several offenders in succession, subject to right of, S. 272 285
to jurors may be taken by accused or by prosecutor: grounds to be stated, S. 277 288

OBJECTIONS to jurors in High Court without stating grounds, *ib.* ... *ib.*
on what grounds may be allowed, S. 278 ... *ib.*

PAGE
decision of, S. 279 289
supplying new jurors when objections allowed, *ib.* ... *ib.*
OBJECTIONS new jurors chosen to replace others, to be subject to, *ib.* ... *ib.*
allowable, to be kept in view in preparing list of jurors and assessors for Court of Session, S. 321 318
to list of jurors and assessors for Court of Session; issue of notice as to hearing, and procedure in reference to hearing, Ss. 323, 324 319
made to irregular commitment, effect of, S. 532... ... 487
to trial with assessors of offence triable by jury, S. 536 ... 489
OBSTRUCTION, to Police-officer in execution of his duty; arrest, without warrant, in case of, S. 54 78
unlawful, conditional order for removal of, S. 133 ... 132
to persons lawfully employed, issue of order in urgent cases of nuisance in view to prevention of, S. 144 143
to public servant, charge of, S. 223, Ill. 213
OCCUPANT of place searched, presence at search of, S. 103 111
OCCUPIERS of land, and their agents, bound to report certain matters, S. 45... 73
OFFENCE, "complaint" includes allegation before a Magistrate of an, S. 4 ... 42
definition of, *ib.* ... ... *ib.*
OFFENCES, what, form warrant-cases, *ib.* 43
summons-cases, *ib.* ... ... *ib.*
to be inquired into and tried according to provisions of Code, S. 5 44
COGNIZABLE BY EACH COURT, DESCRIPTION OF.
under Penal Code, Courts by which triable, S. 28 58
other laws, Courts by which triable, S. 29 59
limit of Magistrates' powers in trial of, *ib.* ... *ib.*
not punishable with death, investiture of District Magistrate with power to try as a Magistrate all, S. 30 ... ... *ib.*
several, sentence in cases of conviction at one trial of, S. 35 ... 65
offender not necessarily to be sent to a higher Court for trial when charged with several, *ib.* ... ... *ib.*
combined sentence for several, deemed a single sentence for confirmation or appeal, *ib.* ... ... *ib.*
Public to give information of certain, S. 44... 71
OFFENCE to be specified in writing when subordinate Police-officer is deputed to make an arrest without warrant, S. 56 85
in presence of Magistrate, arrest of person committing, S. 64 ... 89
OFFENCES, security for keeping the peace on conviction of certain, S. 106 ... 112
OFFENCE, issue of order to person concealing with object of committing, to show cause against security for good behaviour, S. 109 ... 116
commission, attempt or abetment of any, in any place, constitutes breach of bond for keeping the peace or for good behaviour, S. 121 125
certain persons acting under Chapter ix to be deemed as not having thereby committed an, S. 132 131
OFFENCES where ordinarily to be tried, S. 177 191
OFFENCE by reason of thing done or consequence ensuing, place of trial in respect of accusation of, S. 179 192
place of trial where act is an, by reason of relation to another, S. 180 194
committed beyond local jurisdiction, power to issue process for, S. 186 198

PAGE

OFFENCE committed out of British India, trial of, S. 188 199
power to direct copies of depositions and exhibits to be received in evidence at inquiry or trial of, S. 189 200
OFFENCES, cognizance of, by Magistrates, S. 191 201
by Court of Session, S 193 205
by High Court, S. 194 206
certain, not to be taken without previous sanction, S. 195 207
OFFENCE charged, to be declared in charge framed on commitment to Court of Session or High Court, S. 210 228
to be stated in same form as charge, on notification of commitment, S. 218 234
to be stated in charge, S. 221 240
specific name of, sufficient description for charge, *ib.* ... ... *ib.*
how stated in charge when it has no specific name, *ib.* ... 241
law creating, to be stated in charge, *ib.* ... ... *ib.*
charged, fulfilment of every condition required to constitute the, implied by fact of charge being made, *ib.* ... ... *ib.*
previous conviction of an, when to be mentioned in charge, *ib.* ... *ib.*
OFFENCES referred to in sections 198 and 199, no person to be convicted under section 238 of, unless complaint has been made as required by those sections, S. 238 252
persons accused of same offence, or of different offences committed in the same transaction, or one person charged with committing and another with abetting or attempting an offence, may be charged and tried either together or separately, S. 239 ... 253
OFFENCE, particulars of, to be stated to accused in trials of summons-cases, S. 242 255
OFFENCES, what, may be tried summarily, S. 260 270
abetment of certain, may be tried summarily. *ib.* ... ... *ib.*
attempts to commit certain, when may be tried summarily, *ib.* ... *ib.*
authority to confer on certain Benches power to try summarily certain, S. 261 274
OFFENCE complained of or proved, and date of its commission, to be entered in record of summary trial, S. 263 275
OFFENCES, Local Government may order trials of all, or of particular classes of, before Court of Session, to be by jury, S. 269 ... 280
not triable by jury, when to be so tried before Court of Session, *ib.* *ib.*
OFFENCE, objection to juror on ground of his having been convicted of an, S. 278 288
charged, description of, to be read by prosecutor, S. 286 ... 292
which Sessions Judge considers to have been committed, to be stated when he submits jury's verdict of acquittal to High Court, S. 307 ... 309
OFFENCES, compounding: list of offences; by whom compoundable; effect of composition, S. 315... 336
certain, record of evidence in trials of, by first and second class Magistrates, S. 355 345
certain, discretion of first and second class Magistrates as to manner of recording evidence in trials of, S. 358 349

PAGE

OFFENCE and section, to be specified in judgment, S. 367 358
judgment in alternative when section applicable to offence is doubtful, *ib.* ... ... *ib.*
punishable with death; judgment to state reason when sentence of death is not passed, S. 368 359
complained of or proved, and date of its commission, to be recorded in Presidency Magistrate's judgment, S. 370 361

OFFENCES: trial after previous acquittal or conviction, S. 403 ... 392
certain, tabular statement of; shewing—
(1) whether cognizable by police or not,
(2) whether a warrant or a summons should ordinarily issue in the first instance,
(3) whether bailable or not,
(4) whether compoundable or not,
(5) punishment, and
(6) Courts by which triable, Sch. II 517
See *Bailable offence; Cognizable offence; Continuing offence; Nonbailable offences; Non-bailable and cognizable offence; Non-cognizable offence.*

OFFENDER not necessarily to be sent to a higher Court for trial when charged with several offences, S. 35 65
pursuit of, into other jurisdictions, S. 58 85

OFFENDERS, proclaimed, direction of warrants to landholders, &c., for arrest of, S. 78 97
in respect of stolen property, forged documents, &c.; production before Magistrate of, S. 98 108
habitual, issue of order to, to show cause against security for good behaviour, S. 110 117
attending Court, detention of, S. 351 343
already sentenced for another offence, commencement of new sentence on, S. 397 388
not to be excused under section 397 from any punishment to which they are liable upon former or subsequent conviction, S. 398 389
in certain cases of contempt; discharge of, on submission or apology, S. 484 450

OFFICER authorized to try petty offences in certain military bazars, S. 1 ... 38
exercising (or 'having') the powers (or the 'full powers') of a Magistrate; corresponding expression in Code, S. 3 39
succeeding to position of District Magistrate, duties of, S. 11 ... 46
delegation to any, of authority to appoint "Special Magistrates", S. 14 50
or other person making an arrest, seizure and disposal of offensive weapons found by, S. 53 78
appointed by High Court, signature of summons by, S. 68 90
of Court, service of summons by, subject to rules prescribed by Local Government, *ib.* ... ... *ib.*
signature of receipt for summons, when required by serving, S. 69... 92
signature of receipt for summons by member of summoned person's family, when required by serving, S. 70 ... ... *ib.*

PAGE

OFFICER serving summons, procedure by, when receipt cannot be obtained, S. 71 92
serving summons not present at hearing of case, proof of service when, S. 74 93
acting under warrant of arrest, duty of, on order being made for taking security, S. 76 96
executing search-warrant, persons in charge of closed place to allow search on demand of, S. 102 ... 111
procedure by, on refusal of entry into closed place, *ib.* ... ... *ib.*
to invite attendance of witnesses, and to make a list of things found, S. 103 ... *ib.*
serving or executing summons or warrant issued under section 114 to deliver to party copy of order made under section 112, S. 115... 122
commissioned or non-commissioned, in command of troops; duty of, on requisition of Magistrate for dispersion of assembly, S. 130 ... 131
commissioned, power of, to disperse assembly in absence of instructions from a Magistrate, S. 131 ... ... *ib.*
acting under section 131, in good faith, to be deemed as not having thereby committed an offence, S. 132 132
inferior, acting under military authority in accordance with an order under Chapter ix, to be deemed as not having thereby committed an offence, *ib.* ... ... *ib.*
whose duty it is to prevent offence or to take cognizance of it; Police-officer to communicate to, information of design to commit cognizable offence, S. 150 154
of Police, superior, submission of reports of suspected cognizable offences through, S. 158 160
reports of police investigations to be submitted through, S. 173 177
may direct further investigation by police, *ib.* ... 178
of the Court, jury or assessors viewing any place to be conducted to it by an, S. 293 300
conducting jury or assessors to view any place, duty of, S. 293 ... 301
of the Court, jurors locked up to be placed in charge of an, S. 296 302

OFFICERS, salaried, of Government, exemption of, from service as jurors in High Courts, S. 313 315
in superior civil employ, certain, exempted from serving as jurors or assessors, S. 320 317

OFFICER appointed by Local Government to make out, with Sessions Judge, list of jurors and assessors for Court of Session, S. 321 ... 318
appointed by Local Government to sit with Sessions Judge for hearing objections to and for revising list of jurors and assessors for Court of Session, S. 324 319
in charge of jail, warrant for execution of sentence of imprisonment to be directed to, S. 384 370
in charge of jail, presentation of appeal through, S. 420 ... 403
so empowered by Local Government may conduct prosecution without obtaining special permission from Court, S. 495 ... 161

OFFICERS of Police, superior, powers of, S. 550 507
See *Army; Commanding Officer; Judicial Officer; Medical Officer; Police Officer.*

PAGE

OFFICER IN CHARGE OF A POLICE-STATION.
definition of, S. 4 42
certain persons bound to report certain matters to nearest, S. 45 ... 73
arrest of vagabonds by, S. 55 83
procedure when subordinate officer is deputed by, to arrest without warrant, S. 56 85
persons arrested to be taken before, S. 60 86
report of apprehensions to be made by, S. 62 88
endorsement by, of warrant of arrest for execution outside jurisdiction, S. 84 99
in mufassal, power of, to issue order to produce document or other thing, S. 94 106
assembly to disperse on command of, S. 127... 129
use of civil force by, for dispersion of assembly, S. 128 ... 130
inspection of weights and measures by, S. 153 155
treatment by, of information concerning commission of cognizable offence, S. 154 156
procedure by, on receipt of information concerning commission of non-cognizable offence, S. 155 157
investigating cognizable case, assimilation of powers of Police-officer investigating non-cognizable case to those of, *ib.* ... *ib.*
power of, to investigate cognizable case, S. 156 158
procedure by, where cognizable offence suspected, S. 157 ... *ib.*
instructions by superior officer of Police to, on report of suspected cognizable offence, S. 158 160
search by, or under orders, of, S 165 169
power of, to require officer in charge of another station to issue search-warrant, S. 166 171
procedure by, when investigation cannot be completed in twenty-four hours, S. 167 ... ... *ib.*
release of accused by, on completion of police investigation, S. 169 173
procedure by, when police investigation discloses sufficient evidence to justify case being sent to Magistrate, S. 170 ... ... *ib.*
may forward recusant complainant or witness in custody, S. 171 ... 175
to forward report of every police investigation to Magistrate, S 173 177
may be directed by superior officer of Police to make further investigation, *ib.* 178
to inquire into and report on unnatural and sudden deaths, S. 174 ... *ib.*
may summon persons to attend at investigation into sudden or unnatural death, S. 175 190
bail or bond to be taken from person arrested or detained without warrant by, for bailable offence, S. 496 463
bail or bond when to be taken from person arrested or detained without warrant by, for non-bailable offence, S. 497 ... ... *ib.*
OMISSIONS, illegal, application of certain words to, S. 4 43
OMISSION of jury to return verdict as to propriety of order for removal of nuisance, procedure on, S. 141 141
to mention previous conviction in charge, may be rectified at any time before sentence, S. 221 241
in charge, effect of, ... 244

PAGE

OMISSION to ask person whether he is an European British subject, effect of, S. 531 489
to frame charge, effect of, S. 535 ... ... *ib.*
in charge or proceedings: finding, sentence or order when reversible by reason of, S. 537 490
OPINION, framing of rules for settling mufassal Benches' differences of, S 16 .. 52
framing of rules for settling Presidency Benches' differences of, S. 21 55
of Magistrate, manner of recording statements before inquiry or trial, left to, S. 164 167
of Judge upon questions of fact or of mixed law and fact, may be expressed to jury, S. 298 302
of assessors, delivery and record of, S. 309 312
Judge not bound to conform to, *ib.* ... ... *ib.*
difference of, between officers hearing objections to list of jurors and assessors for Court of Session, S. 324 319
difference of: procedure where Judges do not agree in case submitted for confirmation of sentence, S. 378 366
procedure where Judges of Appellate Court are equally divided, S. 429 409
procedure where Judges of High Court in revision are equally divided, S. 439 416
ORDERS made under former Acts, saved, S. 2 38
of Local Government, duties of officer succeeding to chief executive criminal administration of a district, pending, S 11 46
by Local Government as to powers of Benches of Magistrates, provision in absence of, S. 15 50
ORDER by a Magistrate, arrest by police without warrant or, S. 54 ... 78
of Local Government, power of police to arrest without warrant offenders proclaimed by, S. 54 ... ... *ib.*
in writing, to be given to subordinate Police-officer when deputed to make an arrest without warrant, S. 56 86
of a Magistrate under section 167, period of detention in custody of persons arrested without warrant, in absence of special, S. 61 87
discharge of persons arrested without warrant, under special, S. 63 89
by Magistrate to arrest person committing offence in his presence, S. 64 *ib.*
for attachment of property of absconder, S. 88 101
of moveable property of absconder *ib.* ... 102
of immoveable property of absconder, *ib.* ... ... *ib.*
by officer in charge of Police-station in mufassal for production of document or other thing, S. 94 106
of superior authority as to production of document in custody of Postal Department, S. 95 ... ... *ib.*
for things found in execution of search-warrant beyond jurisdiction being taken to issing Court, S. 99 110
to execute bond for keeping the peace on conviction, S. 106 ... 112
for security for keeping the peace, showing cause against, S. 107 ... 114
to execute bond for good behaviour of vagrants, &c., showing cause against, S. 109 116

PAGE

ORDER to execute bond for good behaviour of habitual offenders, showing cause against, S. 110 117
for showing cause under section 107, 109 or 110, contents of, S. 112 119
for showing cause under section 107, 109 or 110, procedure with, when party present in Court, S. 113 121
made under section 112, summons or warrant issued under section 114 to be accompanied by copy of, S. 115 122
to furnish security to keep the peace, power to dispense with attendance of person required to show cause against, S. 116 ... *ib.*
under section 112, inquiry as to truth of information after reading or explaining, S. 117 ... ... *ib.*
requiring security for keeping the peace or for good behaviour, form of inquiry as to truth of information in case of, *ib.* ... ... *ib.*
for furnishing security for keeping the peace or for good behaviour, passing, after inquiry, S. 118 124
under section 118, not to require more than order under section, 112, S. *ib.* ... ... *ib.*
under section 106 or 118, commencement of period for security required by, S. 120 125
for security under section 106 or 118, procedure on disobedience to, S. 123 126

ORDERS of High Court or Court of Session, when person disobeying order for security under section 106 or 118 to be detained pending, *ib.* ... *ib.*

ORDER by High Court or Court of Session, passing of, in certain cases of disobedience to order for security under section 107 or 119, *ib.* ... 127
of District or Presidency Magistrate, or of their predecessors, or of some subordinate Magistrate; release of person imprisoned by, for failure to give security, S. 121 ... ... *ib.*
by District or Presidency Magistrate for release of person imprisoned for failure to give security, *ib.* ... ... *ib.*
of High Court or Court of Session, release of person imprisoned by, for failure to give security, *ib.* ... ... *ib.*

ORDERS of High Court or Court of Session, report for, of case of person imprisoned of failure to give security, *ib.* ... ... *ib.*

ORDER by High Court or Court of Session for release of person imprisoned for failure to give security, *ib.* ... ... *ib.*
to give fresh security for peaceable conduct or for good behaviour, on discharge of surety, S. 126 128
under section 126 to be deemed as made under section 106 or 118, *ib.* *ib.*
under Chapter ix, persons acting under military authority in accordance with an, to be deemed as not having thereby committed an offence, S. 132 132
conditional, for removal of nuisance, S. 133 ... ... *ib.*
duly made under section 133, not to be called in question in Civil Courts, *ib.* 133
for removal of nuisance, manner of service or notification of, 134 ... 136
for removal of nuisance, person affected by, to obey or show cause or claim jury, 135 ... ... *ib.*

PAGE

ORDER conditional, for removal of nuisance, to be made absolute when party does not obey or put in appearance, S. 136 ... 136
procedure on party showing cause against, S. 137 ... 137
for removal of nuisance, to be made absolute on jury finding it reasonable, S. 139 ... 139
recovery of costs of removing nuisance by sale of property removed by Magistrate's, S. 140 ... 140
for attachment and sale of property beyond jurisdiction in view to recovery of costs of removing nuisance, endorsement of, *ib.* ... *ib.*
passing, and manner of execution of, on failure to appoint jury to inquire into propriety of order for removal of nuisance or on omission of jury to return verdict, S. 141... ... 141
for removal of nuisance, power of Magistrate making, to issue injunction pending inquiry, S. 142 ... 142
prohibiting repetition or continuance of nuisance, S. 143 ... *ib.*
requiring person in urgent cases of nuisance to take certain order with property, S. 144 ... 143
for removal of nuisance, in urgent cases: may be passed *ex-parte;* direction of order; power to rescind or alter order; currency of order, *ib.* ... *ib.*
for appearance of parties to dispute concerning land, &c., S. 145 ... 146
temporarily continuing possession of disputed land, &c., to party decided to be in possession, *ib.* ... *ib.*
in cases of disputes concerning easements, &c., S. 147... ... 152
permissive, in cases of disputes concerning easements, not to be passed under certain circumstances, *ib.* ... *ib.*
from a Magistrate, arrest without, in view to preventing cognizable offence, S. 151 ... 155
by Magistrate, necessary to investigation of non-cognizable case by police, S. 155 ... 157
by Magistrate not necessary to investigation of cognizable case by police, S. 156 ... 158
general or special, as to mode of submission of reports of suspected cognizable offences, S. 158 ... 160
by Police-officer requiring attendance of witnesses, S. 160 ... 161
to subordinate Police-officer to make a search, S. 165 ... 169
by certain Magistrates for detention of accused persons pending completion of police investigation, to be reported to their superior, S. 167 171
general or special, of District or Sub-divisional Magistrate; police to inquire into sudden or unnatural deaths unless otherwise directed by, S. 174 ... 178
of commitment to Court of Session or High Court, when to be made, S. 213 ... 229
final, to be entered in record of summary trial, S. 263 ... 275
directing trials before Court of Session to be by jury; power to make, revoke and alter, S. 269 ... 280

ORDERS by officers preparing or revising list of jurors or assessors for Court of Session, finality of, S. 324 ... 319
to be passed by High Court on proceedings when they are not understood by accused, S. 341 ... 329

PAGE

ORDER postponing or adjourning proceedings, to state reasons: if not made by a High Court, to be signed by the presiding Judge, S. 344 ... 334
final, and its date, to be recorded in Presidency Magistrate's judgment, S. 370 361
of confirmation, not to be made by High Court before expiry of period allowed for appeal, S. 376 365
in case of difference of opinion as to case submitted to High Court for confirmation of sentence, S. 378 366
in case submitted to High Court for confirmation of sentence; copy of, to be sent to Court of Session, S. 379 ... ... *ib.*
appealed against; copy of, to accompany appeal, S. 419 402
powers of Appellate Court in respect of any, S. 423 405
when Judges of Appellate Court are equally divided, S. 429 409
on appeal, finality of, S. 430 410
in certain cases of nuisance and in magisterial inquests: records may not be called for by superior Courts, S. 435 411
right of European British subject to apply for order to produce his person, S. 456 427
for maintenance of wives and children: Magistrates who may pass, S. 488 453
how enforced, *ib.* ... ... *ib.*
alteration in allowance, S. 489 456
copy of, to be given to person in whose favour it is made: order enforceable by any Magistrate, S. 490 457
to find sufficient sureties when those accepted have proved insufficient, S. 501 465
for recovery of penalty of bond, appeal from and revision of, S. 515... 471
for disposal of property: passing order; High Court or Court of Session may direct committing Magistrate to carry it into effect; time for appeal to be allowed, S. 517 ... ... *ib.*
for disposal of property, may take form of reference to District or Sub-divisional Magistrate, S 518 476
for payment to innocent purchaser of money found on prisoner, S. 519 *ib.*
for disposal of property, stay of, S. 520 477
for restoration of immoveable property: such order not to prejudice rights which may be established by civil suit, S. 522 ... *ib.*
for sale of property seized by police appeals: against such orders, S. 524 479
for transfer of case: such order not to be made unless twenty-four hours have elapsed between notice and hearing of application, S. 526 480
of attachment, forms of, Sch. V. 4 604
ORDERS for removal of nuisances, forms of, Sch. V. 16 609
other, in nuisance cases, forms of, Sch. V. 17 to 21 ... 610, 611
ORDER declaring party entitled to retain possession of land, &c., in dispute; form of, Sch. V. 22 611
prohibiting the doing of anything on land or water, form of, Sch. V. 26 613
OUDH, investiture of District Magistrate with special powers in, S. 30 ... 59
OWNERS of land, and their agents, bound to report certain matters, S. 45 ... 73

P.

PANJAB, investiture of District Magistrate with special powers in the, S. 30 59

PAGE

PARDON, tender of, Ss. 337, 338... ... ... 323, 327
commitment of person to whom, has been tendered, S. 339 328
saving of Her Majesty's right to grant, S. 401 391
proceedings not vitiated when Magistrate not empowered tenders, S. 529 485

PARENTAGE of accused, to be entered in record of summary trial, S. 263 .. 275
when to be recorded in Presidency Magistrate's judgment, S 370 361

PARTICULARS as to time, place or person, to be stated in charge, S 222 ... 243
as to manner of committing offence, when to be stated in charge, S. 223 ... ... *ib.*
of offence, to be stated to accused in trials of summons-cases, S. 242 255
to be recorded in summary trials where no appeal lies, S. 263 ... 275
mentioned in section 263, to be embodied in judgment in summary trials where there is an appeal, S. 264... 277
to be recorded by Presidency Magistrate instead of a judgment, S. 370 361

PARTIES, optional with Court of Revision to hear, S. 440 418
commission, return thereto and depositions of witnesses, to be open to inspection of, and may be read in evidence by, S 507 ... 469
convenience of, ground for transfer of case by High Court or by Governor General in Council, S. 527 484

PAYMENT of rent to absconder, order prohibiting, S. 88 101
of expenses of local inquiry into dispute concerning land, &c., declaration as to, S. 148 153
to innocent purchaser of money found on prisoner, S. 519 ... 476
for compensation to be taken into account in subsequent civil suit, S. 546 504

PEACE, Public to assist Magistrates and Police in prevention of breach of the, S 42 70
breach of the, security on conviction of: bond to be void if conviction is subsequently set aside, S. 106 112
breach of the, order for security on receipt of information as to likelihood of, S. 107 114
procedure of Magistrate, &c., not empowered under section 107, on apprehension of, S. 108 .. 116
issue of warrant of arrest in view to prevent, S. 111 ... 121
keeping the, power to dispense with attendance of person called upon to show cause against furnishing security for, S. 116 ... 122
order for security for keeping the; form of inquiry as to truth of information in case of, S. 117 ... ... *ib.*
security for keeping the, passing, after inquiry, order for, S. 118 ... 124
discharge on proof of no necessity to require security for keeping the, S. 119 125
contents of bond for keeping the: what constitutes breach of bond S. 121 ... ... *ib.*
failure to give security for keeping the, kind of imprisonment awardable on, S. 123 126
power of District Magistrate to cancel any bond for keeping the, S. 125 128

PAGE

PEACE, public, assembly of persons likely to cause disturbance of, to disperse on command, S. 127 129
procedure on receipt of information as to dispute concerning land, &c., which is likely to cause breach of the, S 145 146
procedure on receipt of information as to dispute concerning easements, &c, which is likely to cause breach of the, S. 147 ... 152
insult with intent to provoke breach of the; may be tried summarily, S. 260 270
insult with intent to provoke breach of the, compoundable, S. 345 ... 336
discharge of bond for keeping the: proceedings void when discharge made by Magistrate not empowered, S. 530 486
form of bond to keep the, Sch V. 10 607
form of summons on information of probable breach of the, Sch. V. 12 ... ... *ib.*
form of warrant of commitment on failure to find security to keep the, Sch. V. 13 608
form of notice to Principal on forfeiture of bond to keep the, Sch. V. 49 624
form of warrant to attach property of Principal on breach of bond to keep the, Sch. V. 50 .. .. *ib.*
form of warrant of imprisonment on breach of bond to keep the, Sch. V. 51 625

PEACEABLE CONDUCT, discharge of sureties to bond for, S. 126 ... 128

PENAL SERVITUDE, sentence of, passed on escaped convict when to take effect such sentence to be deemed severer than one of imprisonment, S. 396 387
commutation of sentence of, S. 402 392

PENDING CASES to be decided under Code: Courts to be guided by High Court rules in cases of doubt, S. 558 513

PERISHABLE PROPERTY of absconders, proviso as to speedy sale of, S. 88 ... 101
power to sell, S. 525 480

PETITION of appeal, S. 419 402

PETTY CASES, certain, no appeal in, S. 413 399
referred to in section 413, when appeal may be brought in, S. 415 400

PHOTOGRAPHY, included in "Writing," S. 4 40

PLACE, definition of, S. 4 43

PLACES and times of sitting, framing of rules for mufussal Benches regarding, S. 16 52
of rules for Presidency Benches regarding, S. 21 55

PLACE of arrest, period of detention of arrested persons, exclusive of time of journey from, S. 61 87
of search, restriction of search-warrant as to, S. 97 108
suspected to contain stolen property, forged documents, &c, search of, S. 98 ... ... *ib.*
power of Magistrate to direct search of, in his presence, S. 105 ... 112
public, conditional order for removal of nuisance from, S. 133 ... 132
certain property and places included in "public place", S. 133 ... 133

PLACES, affixing in appropriate, notice of order for removal of nuisance, S. 134 136

PAGE

PLACE, order in urgent case of nuisance may be directed to the public, when frequenting or visiting a particular, S. 144 143
suspected to contain false weights or measures, search by police of, S. 153 155
of inquiry or trial, police power of investigation into cognizable cases subject to provisions in Chapter xv as to, S. 156 158
in which offence was committed, to be specified in sanction for prosecutions for contempts of lawful authority of public servants, &c., S. 195 207
particulars as to, to be stated in charge, S. 222... 243

PLEA in warrant-cases, to be recorded by Magistrate, S. 255 265
Magistrate may convict on, *ib.* ... ... *ib.*
of accused, to be entered in record of summary trial, S. 263 ... 275
before High Courts and Courts of Session, to be recorded, S. 271 ... 284
High Courts and Courts of Session may convict on, *ib.* .. ... *ib.*
procedure by High Courts and Courts of Session, failing, S. 272 ... 285
of accused, to be recorded in Presidency Magistrate's judgment, S. 370 361
appeal where accused has been convicted on his own, S. 412 ... 399

PLEADER, definition of, S. 4. 42
appearance by, of person called upon to show cause against furnishing security for keeping the peace, S. 116 122
appearance by, of parties to dispute concerning land, &c., S. 145 ... 146
Magistrate may allow accused to appear by, S. 205... ... 222
opening case for defence: examining witnesses; summing up, S. 290 299
right of accused to be defended by a, S. 340 328
when personal attendance of accused dispensed with, evidence taken under certain chapters to be taken in presence of his, S. 353 ... 344
for accused, evidence in certain cases in mufassal to be read over to witnesses in presence of, S. 360 352
for accused, interpretation of evidence to, S. 361 ... ... *ib.*
judgment to be pronounced in presence of accused or his, S. 366 ... 357
for appellant may present appeal, S. 419 402
to have an opportunity of being heard before summary rejection of appeal, S. 421 404
notice of appeal when to be given to, S. 422 ... 405
hearing, S. 423... ... ... *ib.*
or appellant himself, additional evidence for Appellate Court ordinarily to be taken in presence of, S. 428 409
privately instructed, to be under Public Prosecutor's direction, S. 493 459
any person conducting prosecution may do so personally or by, S. 495 461
examination of witnesses by, when commission is issued, S. 505 ... 468

POISONING, circular issued for guidance of Bengal Police in cases of suspected, S. 174 *note* 181

POLICE, Magistrate of: corresponding expression in Code, S. 3 ... 39
how to deal with offenders arrested by private persons, S. 59 ... 86
local, to assist in executing warrant of arrest directed to Police-officer for execution outside jurisdiction, S. 84 99
statements of witnesses to, not to be signed or admitted in evidence, S. 162 162

PAGE

Police, Magistrate authorizing detention of accused in custody of, to record reasons, S. 167 171
Magistrate to hold inquiry into cause of death of person dying while in custody of, S. 176 190
rules for guidance of, for conducting prosecutions in Bengal, S. 495 *note* 461
investigation by, ordered by Magistrate not empowered: proceedings not vitiated, S. 529 485

Police-officers, village, in Bombay Presidency, not affected by Code, except as specially provided, S. 1 38
report of, not a "complaint," S. 4 39
certain, when considered "Officers in charge of Police-stations," *ib.* 42
name of offence and case for and in which arrest may be made without warrant by, *ib.* ... ... *ib.*
name of offence and case for and in which arrest may not be made without warrant by, *ib.* 43
Public when to assist, S. 42 70
Public to give information of certain offences to nearest, S. 44 71
village, bound to report certain matters, S. 45 ... 73
or other person, arrests how to be made by, S. 46 75
procedure by, on resistance to arrest, *ib.* ... *ib.*
search of premises by, in order to effect an arrest, S. 47 ... 76
procedure of, where ingress to place in view to effecting an arrest not obtainable, S. 48 ... ... *ib.*
breaking open door or window by, for purposes of liberation after entry into place in order to effect an arrest, S. 49... 77
search of arrested persons by, S. 51 ... ... *ib.*
arrest without warrant, by, S. 54 78
in the execution of his duty; arrest, without warrant, of person obstucting, *ib.* ... . *ib.*
subordinate, deputation of, to arrest without warrant, S. 56 85
refusal to give name and residence to, S 57 ... *ib.*
pursuit of offenders into other jurisdictions by, S. 58 ... *ib.*
offenders arrested by private persons to be made over to a, S. 59 86
arresting without warrant, to take or send offender to Magistrate or to officer in charge of Police-station, S. 60 ... ... *ib.*
not to detain offender for more than 24 hours; S. 61 87
discharge of persons arrested by, without warrant, S. 63 ... 89
summons ordinarily to be served by a, S. 68 ... 90
direction of warrant of arrest to, S. 77 96
execution of warrant of arrest when directed to more than one, S. 77 ... ... *ib.*
persons arrested by landholders, &c., under warrant, to be made over to nearest, S. 78 97
execution of warrant of arrest directed to, S. 79 ... *ib.*

PAGE

POLICE-OFFICERS, or other person making arrest, notification of substance of warrant by, S. 80 98
arresting under warrant, to produce prisoner before Court without delay, S. 81 ... *ib.*
warrant of arrest for execution outside jurisdiction, not necessarily to be directed to a, S. 83 ... ... *ib.*
warrant of arrest for execution outside jurisdiction directed to a, S. 84 99
not below rank of officer in charge of a Police-station, endorsement of warrant of arrest for execution outside jurisdiction by a, *ib.* ... ... *ib.*
authorization of, to search place suspected to contain stolen property, forged documents, &c., S. 98 ... 108
issue of warrant on report of, for arrest of party required to show cause under section 107, 109 or 110, S. 114 ... 121
protection of, against prosecution for acts done under Chapter ix, S. 132 131
to prevent cognizable offences, S. 149... 154
duty of, on receiving information of design to commit cognizable offence, S. 150 ... ... *ib.*
may arrest to prevent cognizable offence, S. 151 155
may prevent injury to public property, S. 152 ... *ib.*
investigation of non-cognizable case by, S. 155 157
investigating cognizable case, proceedings of, not to be called in question, S. 156 158
subordinate, deputation of, to investigate suspected cognizable offence: when such deputation may be dispensed with, S. 157 ... ... *ib.*
power of, to require attendance of witnesses, S. 160 ... 161
examination of witnesses by, S. 161 162
not to offer any inducement to confess nor prevent voluntary confession, S. 163 164
power of Magistrate not being a, to record statements and confessions before inquiry or trial, S. 164... ... 167
making investigation under Chapter xiv, search by or under orders of, S. 165 169
subordinate, holding investigation, to submit report, S. 168 173
complainants and witnesses not to be required to go to the Court with, S. 171 175
holding an investigation, to keep a diary of his proceedings, S. 172 176
using his diary at an inquiry on trial; procedure, *ib.* ... *ib.*
Court using police diary at an inquiry or trial for the purpose of contradicting, *ib.* ... ... *ib.*
to sign his report on unnatural or sudden death, S. 174 ... 178
may forward corpse to Medical Officer for examination, *ib.*... 179
circular issued for guidance of, in Bengal in cases of suspected poisoning, *ib. note* 181
person arrested for offence committed beyond jurisdiction, when to be delivered to, S. 187 199

PAGE

POLICE-OFFICERS, power to direct, to hold local investigation prior to proceedings being taken upon a complaint, S. 202 ... 217
may without warrant arrest person, suspension or remission of whose sentence has been cancelled, S. 401 391
appointment of, to act as Public Prosecutor, S. 492 ... 458
any Magistrate may permit any person, except certain Police-officers, to conduct the prosecution, S. 495 461
Rules for guidance of, for conducting prosecutions in Bengal, *ib. note* ... ... *ib.*
seizure by, of property taken under section 51 or stolen; procedure, S. 523 478
See *Subordinate Police-officer.*

POLICE REPORT as to dispute concerning land, &c., likely to cause breach of peace; procedure on receipt of, S. 145 146
as to dispute concerning easements, &c.; procedure on receipt of, S. 147 152
report of suspected cognizable offence to Magistrate empowered to take cognizance upon a, S. 157 158
cognizance of offences upon, S 191 201
proceedings not vitiated when Magistrate not empowered takes cognizance upon, S. 529 485

POLICE-STATION, definition of, S. 4 42
certain officers at, when considered "Officers in charge of Police-stations," *ib.* ... ... *ib.*
certain persons bound to report certain matters to officer in charge of nearest, S. 45 73
arrest of persons under certain circumstances concealing their presence within limits of, S. 55... 83
having no means of subsistence, &c., within limits of, *ib.* ... ... *ib.*
offenders arrested by private persons to be taken, in absence of Police-officer, to nearest, S. 59 86
report of arrests without warrant within limits of, S. 62 ... 88
search within limits of, for false weights or measures, S. 153 155
procedure by police on receipt of information concerning commission of non-cognizable offence within limits of, S. 155 157
police may investigate cognizable case which may be inquired into or tried by Court having jurisdiction within limits of, S. 156 158
search by or under orders of Police-officer in any place within limits of his, S. 165 169
See *Officer in charge of Police-station.*

POLITICAL AGENT to certify fitness of inquiry into charge of offence committed in Native State, S. 188 199
definition of, S. 190 201
when commission for examination of witnesses to be directed to: his duty on receiving same, S. 503 ... 466

PORTS of Presidency-towns, Presidency Magistrates to exercise jurisdiction within limits of, S. 19 55

PAGE

POSSESSION of stolen property, forged documents, &c., Police-officer authorized under warrant to take, S. 98 108
fact of actual; order to parties to dispute concerning land, &c., to put in statement of claims respecting, S. 145 146
of land, &c., occasioning dispute: Magistrate to decide who is in possession, without reference to merits of claims as to right of possession, *ib.* ... ... *ib.*
of land, &c., occasioning dispute; party in, to continue to hold it undisturbed until legally evicted, *ib.* ... ... *ib.*
actual, by any disputant; attachment of land, &c, occasioning dispute, failing proof of, S. 146 151
search by or under orders of Police-officer for thing not known to be in any person's, S. 165 169
POST, transmission of warrants of arrest through the, S. 83 98
POST MORTEM, Bombay Government rules for guidance of medical officers in conducting, S. 174 *note* 182
POST-OFFICE laws, offences against, may be inquired into and tried in Presidency-towns, S. 184 197
Department employés, exempted from serving as jurors or assessors, S. 320 317
POSTPONEMENT of issue of process on a complaint, S. 202 217
of proceedings, power to order, S. 344 331
POWERS, special, conferred by other laws, S. 1 37
conferred by former Acts, continued, S. 2 38
"Officer exercising (or 'having') the (or the 'full'), of a Magistrate: corresponding expression in Code, S. 3 39
of District Magistrate, to be exercised by temporary successor, S. 11 46
of subordinate mufassal Magistrates, definition of local areas for the exercise of; their jurisdiction and powers, when not specially defined, S. 12 46
POWER of appointing Sub-divisional Magistrates, delegation of Local Government's, S. 13 49
POWERS, conferment of, on Special Magistrates: such powers, for what purposes conferrible; not to be conferred on certain Police-officers, S. 14 50
of Local Governments in appointing Special Magistrates, delegation of, *ib.* ... ... *ib.*
of Benches of Magistrates, S. 15 ... ... *ib.*
in a Sub-division, subordination to Sub-divisional Magistrate of Benches exercising, S. 17 53
of Chief Magistrates in Presidency-towns, S. 21 55
POWER to try as a Magistrate all offences not punishable with death; investiture of District Magistrate with, S. 30 59
POWERS, Magistrates awarding imprisonment in default of payment of fine, not to exceed their, S. 33 62
ordinary, S. 36 68
additional, S. 37 69
mode of conferring Magistrates', S. 39 ... ... *ib.*
continuance of Magistrates', S. 40 ... ... *ib.*
cancellation of, S. 41 70

PAGE

POWERS, of receivers appointed for attachment of property of absconders, S. 88 101
to try or commit for trial; order by first or second class Magistrate having, for police investigation into non-cognizable case, S. 155... 157
exerciseable by police in investigating non-cognizable case, *ib.* ... *ib.*
to inquire or try, police investigation into cognizable case limited to cases in which Court has, S. 156 158
of Magistrate inquiring into cause of sudden or unnatural death, S. 179... 190
of person, not having magisterial or police powers, holding investigation prior to proceedings being taken upon a complaint, S. 202 217
conferred by section 34, cases in which a District Magistrate exercises, not to be tried summarily, S. 260 271
of High Court dealing with case in which Sessions Judge has disagreed with verdict of jury, S. 307 309
of Appellate Court in disposing of appeal, S. 423 405
of High Court in revision, S. 439 416
of Civil or Revenue Court holding inquiry into cases of contempt &c., mentioned in section, S. 478 446
of officer taking evidence on commission, S. 503 466
of superior officers of Police, S. 550 507
of Local Government, exerciseable from time to time, S. 557 ... 513
ordinary, of mufassal Magistrates, Sch. III 600-*a*
additional, with which mufassal Magistrates may be invested, Sch. IV 601

PREDECESSOR in office, any Magistrate may rescind or alter orders made in urgent cases of nuisance by a, S. 144... 143
Magistrate may act on evidence recorded by his, S. 350 ... 342

PREGNANT WOMAN, postponement of capital sentence on, S. 382 368

PRESENCE of Magistrate, arrest of person committing offence in, S. 64 ... 89
arrest in Magistrate's, S. 65 89
proof of service of summons when serving officer not present at hearing of case, S. 74 93
of witnesses, search under search-warrant to be conducted in, S. 103 111
power of Magistrate to direct search in his, S. 105 ... 112
of party in Court, procedure with order for showing cause under section 107, 109 or 110 on, S. 113 ... 121
inquiry as to truth of information after reading or explaining order under section 112 upon, S. 115 122
of two or more respectable inhabitants of the neighbourhood, police investigation into sudden or unnatural death to be made in, S. 174 178
of accused, examination of supplementary witnesses to be taken in, S. 219 239
evidence taken under certain chapters to be taken in presence of accused or his pleader, S. 353 344
evidence in certain cases in mufassal to be taken down in presence, and hearing of Judge or Magistrate, S. 356 346

PAGE

PRESENCE evidence in certain cases in mufassal to be read over to witnesses in presence of accused or his pleader, S. 360 352
of accused or his pleader, judgment to be pronounced in, S. 366 ... 357
PRESENT in Court, power to take bond for appearance of person, S. 91 ... 105
PRESIDENCY MAGISTRATE: corresponding expression in former Acts, S. 3 ... 39
Court of, one class of Criminal Courts, S. 6 ... 44
appointment of, S. 18 54
local limits of jurisdiction of, S. 19 ... 55
in Bombay, to exercise jurisdiction held by Bombay Court of Petty Sessions, S. 20 ... ... *ib.*
PRESIDENCY MAGISTRATES, framing of rules for guidance of, S. 21 ... 55
Justices of the Peace in virtue of their office, S. 25 57
Courts of, sentences which may be passed by, S. 32 61
warrant of arrest issued by, always to be directed to a Police-officer, S. 77 96
PRESIDENCY MAGISTRATE, authorization by, of search of place suspected to contain stolen property, forged documents, &c., S. 98 108
may issue search-warrant for discovery of persons wrongfully confined, S. 100 110
power of Court of, to require security for keeping the peace on conviction, S. 106 112
power of, to issue order to show cause against security for keeping the peace before conviction, S. 107 114
power of, to issue order to vagrants and suspected persons to show cause against security for good behaviour, S. 109 116
power of, to issue order to habitual offenders to show cause against security for good behaviour, S. 110 117
when to lay before High Court proceedings in case of failure to comply with order for security under section 106 or 118, S. 123 126
power of, to release person imprisoned for failing to give security, S. 124 127
report by, to High Court, in view to release of person imprisoned for failing to give security, *ib.* *ib.*
discharge by, of sureties to bond for peaceable conduct or for good behaviour, S. 126 128
power of, to issue process for offence committed beyond his local jurisdiction, S. 186 ... 198
cognizance of offences by, S. 191 201
taking cognizance upon complaint, procedure by, S. 200 215
power of, to direct local investigation before proceeding upon a complaint, S. 202 217
may commit to Court of Session and High Court, S. 206 223

PAGE

PRESIDENCY MAGISTRATE not required to record reasons on refusing to issue process for production of further evidence, S. 208 223
not required to record reasons for commitment when sending accused to Court of Session or High Court, S. 213 229
power of, to stop proceedings in summons-cases when no complainant, S. 249 259
may tender pardon, S. 337 323
not required to record reasons for tendering a pardon, *ib.* ... ... *ib.*
may exclude any person from Court, S. 352 ... 344
record of evidence in certain cases in Court of, S. 362 353
not required to make a memorandum of accused's examination when he does not record the examination himself, S. 364 354
particulars to be recorded by, instead of a judgment, S. 370 361
appeal from sentence, of, S. 411 398
conviction by, on accused's own plea, S. 412 399
reference by, to High Court, S. 432 ... 410
to carry out High Court's order on reference, S. 433 411
statement by, of grounds of his decision, to be considered by High Court revising proceedings, S. 441 418
who is a Justice of the Peace, may inquire into and try charges against European British subjects, S. 443 419
may try contempts, &c., mentioned in section 195, when committed before himself: such Magistrate may himself dispose of case instead of sending it for inquiry to another Magistrate, S. 487 ... 452
may pass orders for maintenance of wives and children, and appoint persons to receive payments; and may enforce such orders, S. 488 ... 453
may alter rate of allowance sanctioned under section 488, S. 489 456
issue by, of commission for examination of witnesses, S. 503 466
when commission may be directed to, S. 504 ... 467
may proceed in any case of forfeiture of bond, S. 514 473
property seized by police may be sold under orders of, S. 524 479
power of, to order prisoner in jail to be brought up for examination, S. 542 494
power of, to compel restoration of abducted females, S. 551 507
See *Chief Presidency Magistrate.*

PAGE

PRESIDENCY-TOWN, definition of, S. 4 40
PRESIDENCY-TOWNS, not included in Sessions Divisions, S 7 45
deemed districts, *ib.* ... ... *ib.*
not to be divided into sub-divisions, S. 8 ... *ib.*
appointment of Magistrates for, S. 18 54
Presidency Magistrates to exercise jurisdiction in, S. 19... 55
powers of Chief Magistrates in, S. 21 ... ... *ib.*
Chief Magistrates to make rules for guidance of other Magistrates in, *ib.* ... ... *ib.*
appointment of Justices of the Peace for, S. 23 ... 56
present Justices of the Peace in, to continue to hold office, S. 24 57
Presidency Magistrates Justices of the Peace for, S. 25 ... *ib.*
Public to assist Magistrates and Police, both within and without, S. 42 70
Public to give information of certain offences, both within and without, S. 44 71
commissions for examination of witnesses in, S. 504 ... 467
compensation to person groundlessly given in charge in, S. 552 508

PRESIDING OFFICER OF COURT, signature and sealing of summons by, S. 68... 90
signature and sealing of warrant by. S. 75 ... 94
power of, to take bond for appearance of person whose appearance or arrest he may order, S. 91 105
issue of warrant by, on breach of bond for appearance, S. 92 ... ... *ib.*

PRINTING, included in "Writing," S. 4 40

PRISONER, discharge of jury in case of sickness of, S. 283 291
certain High Courts may direct production of, to give evidence, S. 491 458
certain High Courts may direct production of, before Court-martial or Commissioners, *ib.* ... ... *ib.*
removal of, from one custody to another; certain High Courts may direct, *ib.* ... ... *ib.*
in jail: power to order his being brought up for examination; officer in charge of jail to provide for his safe custody while absent from jail, S. 542 494

PROCEDURE, special, prescribed by other laws, S. 1 37
barred by former Acts, not restored, S. 2 38
to be adopted in inquiries into cases triable by Court of Session or High Court, indicated, S. 207 223
to be observed in trial of summons-cases, indicated, S. 241 ... 255
to be observed in trial of warrant-cases, indicated, S. 251 ... 262
for summons and warrant-cases applicable with certain exceptions, to summary trials, S. 262 275
on trial of European British subject and person of another race jointly accused, S. 452 423
to be observed by High Court trying case withdrawn from subordinate Court, S. 526 481

PAGE

PROCEEDINGS by authorized persons for collection of evidence, included in "Investigation," S. 4 40
judicial, definition of, *ib.* ... ... *ib.*
stay of, when propriety of order for removal of nuisance failed to be established, S. 137 137
stay of, when jury finds order for removal of nuisance reasonable, S. 139 139
further, bar to, in case of offence committed out of British India, S. 188 199
in summons-cases, power to stop, when no complainant, S. 249 259
date of termination of, to be entered in record of summary trial, S. 263 276
staying; entry on unsustainable charge, to have effect of, S. 273 286
stay of, on motion of Advocate General, S. 333 ... 322

PROCLAMATION for absconder, publication of, S. 87 100
statement by Court as to publication of, *ib.* ... *ib.*
disposal of attached property on non-appearance in accordance with, S. 88 101
restoration of attached property on absconder's proving insufficient notice of, S. 89 103
of order for removal of nuisance, S. 134 136
for owner of property seized by police, S. 523 478
requiring appearance of a person accused, form of, Sch. V. 4 .. 604
attendance of a witness, form of, Sch. V. 5 .. *ib.*
of property seized by police, Magistrate to make order respecting, S. 523 478

PROHIBITION of delivery of property or payment of rent to absconder, order for, S. 88 101
against keeping noxious goods or merchandize, conditional order of, S. 133 132
of repetition or continuance of nuisance, S 143 ... 142

PROOF of due service of summons, issue of warrant on non-appearance after, S. 90 104
of fact of person being an habitual offender, mode of, S. 117 ... 122
discharge after inquiry under section 117, when necessity to bind over to keep the peace or to be of good behaviour is not proved, S. 119 ... 125
of previous conviction or acquittal, modes of, S 511 471
of forfeiture of bond; grounds to be recorded, S. 514 473

PROPERTY stolen, power of police to arrest without warrant persons possessing, S. 54 78
stolen, arrest of persons who are by repute habitual receivers of, S. 55 83
moveable, or immoveable, of person absconding to prevent execution of warrant of arrest; attachment of, S. 88 101
attached, of absconder, disposal of, S. 88 102
attached, restoration of, S 89 103
stolen or unlawfully obtained, search of place suspected to contain, S. 98 108
security for keeping the peace or conviction of threatening injury to, S. 106 112

PAGE

PROPERTY removed by Magistrate's order, sale of, in view to recovering costs of removal, S. 140 140
moveable, distress and sale of any, in view to recovering costs of removing nuisance, *ib.* ... ... *ib.*
requiring person in urgent case of nuisance to take certain order with certain, S. 144... 143
tangible immoveable, procedure on receipt of information as to dispute concerning, S. 145 146
tangible immoveable, procedure in reference to disputes as to right of doing or preventing the doing of anything upon, S. 147 ... 147
stolen, assisting in concealment or disposal of, when may be tried summarily, S. 260 270
trial of persons previously convicted of certain offences against, S. 348 340
moveable, issue of warrant for distress and sale of, for recovery of fine, S. 386 371
beyond jurisdiction, recovery of fine by distress and sale of, S. 387 373
attached, appeal from order rejecting application for restoration of, S. 405 396
moveable, attachment and sale of, in view to recovery of penalty of bond; issue of warrant; its execution; procedure failing recovery by such warrant, S. 514 473
in respect of which order for disposal may be passed procedure where High Court or Court of Session cannot itself deliver such property; what included in term "property," S. 517 474
order for disposal of, may take form of reference to District or Sub-divisional Magistrate, S. 518 476
stay of order for disposal of, S. 520 477
immoveable, power to restore possession of: saving of rights which may be established by civil suit, S. 522 ... ... *ib.*
connected with an offence, or taken under section 51, or stolen; procedure on seizure by police of, S 523 478
seized by police: procedure when no claimant appears, S. 524 ... 479
power to sell, when perishable, or when sale would benefit owner, S. 525 480
sale of, under section 524 or 525: proceedings not vitiated when sale ordered by Magistrate not empowered, S. 529 485
attachment and sale of, under section 88: proceedings void when ordered by Magistrate not empowered, S. 530 486
immoveable: form of Magistrate's order declaring party entitled to retain possession of land, &c., in dispute, Sch. V. 22 611
form of warrant of attachment in case of dispute as to possession of land, &c., Sch. V. 23 ... 612
form of Magistrate's order prohibiting the doing of anything on land or water, Sch. V. 24 ... ... *ib.*

PROSECUTION of Judges and public servants, Government may determine manner, &c, of, S. 197 210
opening case for, S. 286 292

PAGE

PROSECUTION, procedure after examination of witnesses for, S. 289 ... 297
power of Advocate General to stay, S 333 322
to be conducted by Public Prosecutor, although a pleader has been privately instructed, S. 493 459
Public Prosecutor may withdraw from: effect of such withdrawal, S. 494 460
permission to conduct, necessary in the case of certain persons, S. 495 461
person conducting may do so personally or by pleader, *ib.* ... *ib.*
power to order payment of expenses of, out of fine, S. 545 ... 503
form of bond to prosecute or give evidence, Sch. V. 26 ... 613

PROSECUTOR, how to open his case, S. 286 292
to tender examination of accused before committing Magistrate, S. 287 ... ... *ib.*
summing-up case by, S. 289... 297
right of reply by, S. 292 300
charge to jury to be given on conclusion of reply by, S. 297 ... 302
payment by accused of costs of, when case is transferred, S. 526 480
See *Public Prosecutor.*

PROVINCE, definition of, S. 4 40
every, to be a Sessions Division or to consist of Sessions Divisions, S. 7 45

PROVINCES, investiture of District Magistrate with special powers in certain, S. 30 59

PUBLIC, when to assist Magistrates and Police, S. 42 70
to give information of certain offences, S. 44 71
conditional order for removal of obstruction or nuisance from way or river which may lawfully be used by, S. 133 132
generally, when order in urgent case of nuisance may be directed to the, S. 144 143
property, prevention of injury to, S. 152 155
to have access to Courts: but presiding Judge or Magistrate may exclude any person, or the public generally, S. 352 ... 344

PUBLIC PROSECUTOR, definition of, S. 4 42
trials before Court of Session to be conducted by, S. 270 281
notice of appeal to be given to Public Prosecutor: also copy of grounds of appeal, on his application, S. 422 405
hearing, on an appeal, S. 423 ... ... *ib.*
appointment of, S. 492 458
may plead in all Courts in cases under his charge: pleaders, privately instructed, to be under his direction, S 493 459
may withdraw from prosecution: effect of such withdrawal, S. 494 460
may conduct prosecution without obtaining special permission, S 495 461
notice to, of application for transfer to case, S. 526 ... 480

PUBLIC SERVANTS, contempts of lawful authority of; previous sanction necessary to prosecutions for, S. 195 207

PAGE

PUBLIC SERVANTS, cognizance of offences against, not to be taken except with previous sanction of Government, &c. S. 197 ... 210
Government may determine manner, &c., of prosecuting, *ib.* 211
prosecution of: High Court may not transfer case, S. 526 480
disobeying direction of law with intent to cause injury; form of charge, Sch. V. 28 614
PUNISHMENT, proportion, in certain cases, of imprisonment in default of fine to total awardable, S. 33 62
PUNISHMENTS, Court of District Magistrate specially empowered may award combination of certain, S. 34 64
in cases of simultaneous convictions of several offences; award, and, in certain cases, commencement of, S. 35 ... 65
in cases of simultaneous convictions of several offences, maximum limit of, *ib.* ... ... *ib.*
PUNISHMENT, previous conviction to be mentioned in charge when it is intended that it should affect the, S. 221 241
procedure when Magistrate cannot inflict adequate or proper: Magistrate receiving case from him not to exceed his powers under sections 32 and 33, S 349 341
to be stated in judgment, S. 367... 358
other than death: judgment to state reason why sentence of death was not passed when it was awardable, *ib.* ... ... *ib.*
escaped convicts or offenders already sentenced, not to be accused under section 396 or 397 from any punishment to which they are liable upon former or subsequent conviction, S. 398 389
PUNISHMENTS, suspension and remission of, S. 401 391
commutation of, S. 402 392
combination of; appeal in petty cases and from summary convictions in cases of, S. 415 400
remission of, in certain cases of contempt, on submission or apology, S. 484 450
PURSUIT of offenders into other jurisdictions, S. 58 85
of persons escaped or rescued from custody: provisions of sections 47 and 48, as to searching places, applicable, Ss. 66, 67 ... 89

Q.

QUASHING commitments to Court of Session or High Court, S. 215 232
conviction, in consequence of absence of or error in charge, S. 232 247
irregular commitment, S. 532 487
QUESTIONS which witness at police investigation is bound to answer, and questions which he may refuse to answer, S. 161 ... 162
QUESTION by recording Magistrate as to whether confession is made voluntarily, S. 164 167
may at any time be put to accused: accused not liable for false answers or for refusal to answer, but Court and jury to draw their inferences; answers may be put in evidence, S. 342 ... 330
put to accused, to be recorded in full, S. 364 354
when question of law of unusual difficulty is likely to arise, High Court may transfer case, S. 526 480

PAGE

R.

RAILWAY, Indian, Act (IV of 1879) offences under by whom triable, S. 29 *note* 59
Public to assist Magistrates and Police in preventing injury to a, S. 42 70
RAILWAY COMPANY, service of summons on servant of, S. 72 92
when servant of, may be excused attendance as juror or assessor, S. 329 321
RAILWAY LAWS, offences against, may be inquired into and tried in Presidency-towns, S. 184 197
RAPE, Circular issued for guidance of Bengal Police in cases of suspected, S. 174 *note* 182
REASONS to be recorded when Court issues warrant in lieu of summons, S. 90 104
to be recorded when Magistrate rejects sureties offered for good behaviour, S. 122 126
Police-officer to record, when not sending accused to Magistrate on police investigation not being completed in twenty-four hours, S. 125 128
Magistrates authorizing detention in police custody to record, S. 167 171
to be reported to superior, when certain Magistrates authorize detention of accused persons under section 167, *ib.* ... ... *ib.*
to be recorded on Magistrate refusing to issue process for production of further evidence, S. 208 224
to be recorded on Magistrate discharging accused at an early stage of an inquiry, S. 209 226
to be recorded by mufassal Magistrate when committing accused to Court of Session or High Court, S. 213 229
to be recorded when Magistrate stops proceedings in summons-cases instituted without complaint, S. 249 259
to be recorded when Magistrate discharges accused in warrant-cases before taking evidence or examining him, S. 253 ... 263
to be recorded when Magistrate refuses to issue process for further evidence for defence in warrant-cases, S. 257 268
for conviction, brief statement of, to be entered in record of summary trial, S. 263 275
to be recorded when Sessions Judge submits jury's verdict to High Court, S. 307 309
for tendering pardon, what Magistrates to record, S. 337 ... 323
to be stated in order postponing or adjourning proceedings, S. 344 334
to be recorded when Magistrate or Judge cannot himself prepare memorandum of substance of evidence, Ss. 355, 356 ... 345, 346
to be recorded when Judge or Magistrate cannot take down evidence with his own hand, S. 357 347
to be recorded when Magistrate or Judge is unable to make memorandum of accused's examination, S. 364 354
for decision, judgment to contain, S. 367 358
for not passing sentence of death, to be stated in judgment, *ib.* ... *ib.*
for conviction, when to be stated in Presidency Magistrate's judgment, S. 370 361
to be recorded when Appellate Court suspends sentence pending appeal, S. 426 408

PAGE

REASONS to be recorded when Court takes action on refusal to answer or to produce document, S. 485 450
to be stated when subordinate Magistrate applies for issue of commission, S. 506 468
RECALL of prosecution witnesses by accused in warrant-cases, S. 256 ... 265
of witnesses by Magistrate receiving case from another who could not pass sufficiently severe sentence, S. 349 341
of cases by District or Sub-divisional Magistrate, S. 528 ... 484
power to recall witness at any stage of proceedings, S. 540 ... 492
RECEIVER, appointment of, for attachment of absconder's moveable or immoveable property, S. 88 101
appointed under section 88; powers, duties and liabilities of, S. 88 102
RECEIVERS OF STOLEN PROPERTY, certain persons bound to report residence of, S. 45 73
arrest of persons who are by repute habitual, S. 55 83
RECEIVER OF STOLEN PROPERTY, issue of order to habitual, to show cause against security for good behaviour, S. 110 117
RECEIVING STOLEN PROPERTY, and assisting in concealing it; joinder of charges, S. 235, Ill. 250
charge of, in case where it is doubtful what offence has been committed, S. 236, Ill. ... 251
under Penal Code, section 411, may be tried summarily when value does not exceed fifty rupees, S. 260 270
payment to innocent purchaser of money found on person convicted of, S. 519 ... 476
RECOGNIZANCE for appearance of persons arrested under warrant, S. 76 ... 96
deposit in lieu of, S, 513 472
RECORD of substance of report or information on which Magistrate acts when issuing process to person required to show cause under sections 107, 109, or 110, S. 114 121
making entry on the, on proof of no necessity to require security for keeping the peace or for good behaviour, S. 119 125
of instructions of superior officer of Police on report of suspected cognizable offence, S. 158 160
of statements and confessions before inquiry or trial, S. 164 ... 167
of evidence, statements before inquiry or trial to be recorded in manner prescribed for, *ib.* ... ... *ib.*
of inquiry, to be forwarded on commitment to Court of Session or High Court, S. 218 234
of inquiry, English translation of, to be forwarded when commitment is to High Court, *ib.* ... ... *ib.*
of accused person's admission in trials of summons-cases, S. 243 ... 256
of plea in warrant-cases, S. 255 265
written statement put in by accused during trial of warrant-case, to be filed with the, S. 256 ... . *ib.*
in summary trials in cases where no appeal lies, S. 263 ... 275
where there is an appeal, S. 264 ... 277
language of, S. 265 278

PAGE

RECORD in summary trials held by Benches, to be signed by each member of the Bench when prepared by a clerk, S. 265 ... 279
of plea in trials before High Courts and Courts of Session, S. 271 .. 284
not complete unless it shows the nature of the defence set up, S. 290 *note* 300
of questions put to jury in order to ascertain their verdict, and of their answers, S 303 307
of assessors' opinions, S. 309 312
when Magistrate cannot pass sentence sufficiently severe, S. 349 ... 341
manner of recording evidence in the mufassal, indicated, S. 354 ... 344
memorandum of substance of evidence, to form part of the, S. 355... 345
translation of evidence given in English, when to form part of the, S. 356 346
of evidence in mufassal, Local Government may appoint manner and language of, S. 357 347
evidence in mufassal taken down from Judge or Magistrate's dictation, to form part of the, *ib.* ... ... *ib.*
of evidence in certain cases in Presidency Magistrates' Courts, S. 362 353
of examination of accused; except in trials before chartered High Courts, in summons-cases, and in summary trials, S. 364 ... 354
memorandum of accused's examination, to be annexed to the, *ib.* ... *ib.*
by Court of Session of heads of charge to jury, S. 367 358
judgment to be filed with: translation when also to be filed, S. 372 .. 363
discretion of Appellate Court as to calling for, before rejecting appeal summarily, S. 421 404
RECORD, Appellate Court when to call for, in other cases, S. 423 ... 405
of original Court to be amended in accordance with High Court's decision on appeal, S. 425 407
to be made when Sessions Judge finds his powers inadequate, on trial of European British subject, S. 449... 422
of case to be sent to Magistrate, on commitment by Civil or Revenue Court, S. 479 447
in cases of contempt, Ss. 481, 482 ... ... 448, 449
commission, return thereto and depositions of witnesses to form part of the, S. 507 469
of evidence in absence of accused, S. 512 472
of grounds of proof that bond has been forfeited, S. 514 473
RECORDS of inferior Courts, power to call for and examine, S. 435 ... 411
called for by Sub-divisional Magistrate, when to be submitted to District Magistrate, *ib.* ... *ib.*
procedure in reference to examination of, S. 436—442 ... ... 412 to 418
of subordinate Courts, power of certain Courts to make rules for inspection of, S. 553 508
RECORDER OF RANGOON, a "High Court" as regards proceedings against European British subjects, S. 4 41
RE-EXAMINATION of complainant on transfer of case, not necessary, S. 200 ... 215
of defence witnesses, S 290 299
of witnesses by parties, when commission issued, S. 505 ... 468

PAGE

RE-EXAMINATION power to re-examine witness at any stage of proceedings, S. 540 492
REFERENCE and revision, finality of orders on appeal, except in regard to, S. 430 410
by Presidency Magistrate to High Court: Magistrate to carry out Court's order; payment of costs of reference, Ss. 432, 433 ... ... 410, 411
by Judge of High Court, S. 434 ... ... *ib.*
orders of High Court regarding manner in which, to be made S. 438 *note* 414
Court of, may direct order for disposal of property to be stayed, S. 520 477
District or Sub-divisional Magistrate may withdraw and refer cases, S. 528 484
REFORMATORIES, confinement of youthful offenders in, S. 399 ... 389
REFRESHING MEMORY, police diary when used for, S 172 176
REFUSAL by committer of non-cognizable offence to give name and residence, S. 54 78
to attend at Court of Session or High Court, or to execute bond for attendance; detention of complaints and witnesses on, S. 217 233
by Magistrate to issue process for further evidence for defence in warrant-cases, S. 257 268
to answer, accused not liable for: but Court and jury to draw their inferences, S. 342 330
to answer questions or to produce document, imprisonment or committal on, S 485 450
to maintain wife or child: order for maintenance, S. 488 453
of wife to live with her husband, *ib.* ... ... *ib.*
to answer: form of Magistrate's or Judge's warrant, of commitment in cases where there is no fine, Sch. V. 39 620
REGISTRAR under Registration Act, 1877, to be deemed a Court, S. 483 ... 419
appeals from convictions by, in contempt-cases, to whom to lie, S 486 451
REHEARING of witnesses, may be demanded be accused when Magistrate is succeeded by another, S. 350 312
on detention of offender attending Court, S. 351 .. 313
RELEASE of committer of non-cognizable offence, on his true name and residence being ascertained, S. 57 85
of persons arrested under warrant, on security for appearance being furnished, S. 76 96
of prisoner, on proof of no necessity to require security for keeping the peace or for good behaviour, S. 119 125
of person imprisoned for failing to give security, S 124 127
of accused, on completion of police investigation, S. 169 ... 173
of prisoner, pending appeal, S. 426 408
of accused, pending decision of reference by Presidency Magistrate to High Court, S. 432 410
of accused, by Revising Court, S. 438 414
of lunatic, pending investigation or trial, S. 466 435

PAGE

RELEASE on bail, of person accused of bailable offence, S. 496 463
or on his bond, of person accused of non-bailable offence: subsequent arrest of such person, S. 497 ... ... *ib.*
of accused on execution of bond for appearance, S. 500 465
REMAND of accused to custody, on jury's verdict being submitted by Sessions Judge to High Court, S. 307 309
on postponement or adjournment of proceedings: term of custody; what is reasonable cause for a remand, S. 344 334
REMISSION of sentence when whipping cannot be inflicted owing to offender's ill-health, S. 395 386
and suspension by Governor-General in Council or Local Government, S. 401 391
right of Her Majesty the Queen, saved, *ib.* ... ... *ib.*
of punishment in certain cases of contempt, on submission or apology, S. 484 450
of portion of penalty bond, S. 514 473
REMOVAL to issuing Court, of person apprehended outside jurisdiction under warrant, S 86 100
of nuisance, conditional order for, S. 133 132
sale of property removed by Magistrate's order, in view to recovering costs of, S. 140 140
of public land or other mark, preventing, S. 152 155
of prisoner from one custody to another, certain High Courts may direct, S. 491 457
RENT, order prohibiting payment of, to absconder, S. 88 101
REPAIRING building, conditional order for, S. 133 132
REPLY, prosecutor's right of, S. 292 300
REPORT of a Police-officer, not included in "Complaint," S. 4 ... 39
of apprehensions by police, S. 62 88
of Police-officer, issue of warrant on, for arrest of party required to show cause under section 107, 109 or 110: substance of such report to be recorded by Magistrate, S. 114 121
to High Court or Court of Session in view to release of person imprisoned for failing to give security, S. 124 127
passing conditional order for removal of nuisance, on receipt of, S. 133 132
of person deputed to conduct local inquiry into dispute concerning land, &c., receivable as evidence, S. 148 153
to Magistrate of suspected cognizable offence: report how submitted, Ss. 157, 158 ... ...158, 160
of suspected cognizable offence, power of Magistrate to hold investigation on receipt of, S. 159 ... ... *ib.*
subordinate Police-officer holding investigation, to submit, S. 168 ... 173
in prescribed form, to be sent to Magistrate on completion of every police investigation, S. 173 177
of police investigation, to be forwarded through superior officer of Police, *ib.* .. .. *ib.*
to be prepared of police investigation into sudden or unnatural death, S. 174 178
of police investigation into sudden or unnatural death, to be sent to District or Sub-divisional Magistrate, *ib.* ... ... *ib.*

PAGE

REPORT of investigations into sudden or unnatural deaths in Madras and Bombay, when to be sent to nearest Magistrate authorized to hold inquests, S. 174 179
date of, to be entered in record of summary trial, S. 263 ... 275
to High Court, when to be made, if accused has not understood proceedings, S. 341 329
to accompany case submitted by mufassal Magistrate to higher authority, S. 346 338
to High Court on revision of proceedings, S. 438 414
by committing Magistrate when Sessions Judge is not an European British subject, S. 450 422
to Local Government when accused is found to be of unsound mind, S. 466 435
on acquittal of accused on ground of lunacy, S. 471 440
special, to be made to Local Government, as to mental condition of lunatic prisoner, S. 472 441
to Local Government, to be made by commission of inquiry in lunacy cases, S. 474 442
of Chemical Examiner, may be used as evidence, S. 510 ... 471
to Magistrate, on seizure of property by police, S. 523 478
See *Police report.*

RESCUE from custody, power to pursue and re-take, on, S. 66 89
and grievous hurt; joinder of charges, S. 235, Ill. 249

RESIDENCE, refusal by committer of non-cognizable offence to state his place of, S. 57 85
of person summoned, fixing duplicate of summons on, S. 71 ... 92
sending summons for service to another Magistrate, within whose jurisdiction is, S. 73 93
of absconder, proclamation requiring appearance, to be read and affixed in, S. 87 100
of accused, to be entered in record of summary trial, S. 263 ... 275
of accused, when to be recorded in Presidency Magistrate's judgment, S. 370 361

RESTORATION of attached property, S. 89 103
appeal from order regarding application for, S. 405 396
of possession of immoveable property, S. 522 477
of abducted females, power to compel, S. 551 507

RESTRAINT, unnecessary, persons arrested not to be subjected to, S. 50 ... 77
complainants and witnesses not to be subjected to, S. 171 175

RETRIAL after discharge of jury, S. 308 312
after previous acquittal or conviction, S. 403... 392
Court hearing appeal against acquittal or conviction may order, S. 423 405

RETURNS, power of certain High Courts to make rules for subordinate Courts in reference to preparation and transmission of, S. 553 508

REVENUE, certain officers collecting, bound to report certain matters, S. 45 ... 73
mode of attaching absconder's land paying, to Government, S. 88... 101

PAGE

REVENUE, exemption from service as jurors or assessors of persons engaged in collecting, S. 320 317

REVENUE COURT, procedure by, in cases of contempt, &c., mentioned in section 195, S. 476 443
power of, to complete investigation and commit to Sessions Court, in above cases: to exercise powers of a Magistrate in such investigation, S. 478 446
commitment by; procedure, S. 479 447
may take cognizance of certain cases of contempt, S. 480 ... *ib.*

REVIEW: Court not to review its judgment, S. 369 360
by High Court Judges of case submitted by another Judge of the Court, S. 434 411

REVISION, highest Court of criminal appeal or, a "High Court," except in certain cases, S. 4 41
of list of jurors and assessors for Court of Session, S. 324 ... 319
of sentence when whipping cannot be inflicted owing to offender's ill-health, S. 395 386
High Court's powers of, S. 439 416
hearing of parties optional with Court of, S. 440 418
High Court's order in, to be certified to lower Court or District Magistrate, S. 442 ... ... *ib.*
order for recovery of penalty of bond may be revised by District Magistrate, S. 515 474
Court of, may direct order for disposal of property to be stayed, S. 520 477
proceedings void when Magistrate not empowered revises order under section 514, S. 530 486

REVOCATION of sanction for prosecutions for contempts of lawful authority of public servants, &c., power of, S. 195 207
of order directing trials before Court of Session to be by jury, power of, S. 269 280
Right of way, procedure when disputes concerning, likely to cause breach of the peace, S. 147 152

RIGOROUS IMPRISONMENT, discretion as to awarding, on failure to give security for good behaviour, S. 123 ... 126
sentence of, to be deemed severer than sentence of simple imprisonment, S. 396 387
commutation of sentence of, S. 402 ... 392

RIOT, Public to assist Magistrates and police in suppression of, S. 42 ... 70
issue of order in urgent cases of nuisance in view to prevention of, S. 144 143
power of Local Government to prolong currency of order under section 144 in case of, *ib.* ... ... *ib.*

RIOTING, security for keeping the peace on conviction of, S. 106 ... 112
grievous hurt and assaulting public servant, joinder of charges of, S. 235, Ill. 250

RISK of obstruction, &c., to persons lawfully employed; issue of order in urgent cases of nuisance in view to prevention of, S. 144 ... 143

RIVERS leading to Presidency-towns, Presidency Magistrates to exercise jurisdiction within limits of, S. 19 55

PAGE

RIVER which may lawfully be used by the public, conditional order for removal of obstruction or nuisance from, S. 133 132
ROBBERS, certain persons bound to give information regarding resort of, S. 45 73
arrest of persons who are by repute habitual, S. 55 ... 83
ROBBER, issue of order to habitual, to show cause against security for good behaviour, S. 110 117
ROBBERY and hurt, joinder of charges of, S. 235, Ill. 250
and murder, charge, of, S 239, Ill. 254
form of charge of, Sch. V. 28 615
RULES made under former Acts, saved, S. 2 38
for guidance of Benches of Magistrates, framing of, S. 16 ... 52
by Chief Magistrate; Presidency Magistrates may sit as a Bench, subject to, S. 18 55
conferring powers on senior or Chief Magistrates; Chief Magistrates at Presidency-towns to exercise powers given under, S. 21 ... *ib.*
for guidance of Presidency Magistrates, Chief Magistrate may frame, *ib.* ... ... *ib.*
RULE, direction of High Court by, as to signing of summons, S. 68 ... 90
RULES prescribed by Local Government; service of summons by an officer of the Court, under, *ib.* ... ... *ib*
prescribed Local Government, police to inquire into sudden or unnatural deaths unless otherwise directed by, S. 174 ... 178
prescribed by Local Government, police to be guided by, in forwarding corpse to Medical Officer for examination, *ib.* 179
for locking-up jury, High Court may make: presiding Judge to be guided by such rules, S. 296 302
prescribed by High Court; lists of High Court jurors, to be prepared in accordance with, S. 313 315
as to list of jurors and assessors for Court of Session, to apply on each annual revision of the list, S. 325 320
RULE, general, Judges of chartered High Courts and Chief Court of the Panjab to record evidence in manner prescribed by, S. 365 ... 357
RULES regarding execution of sentences on escaped convict, S. 396 ... 387
regulating discipline and training in private reformatories, S. 399 ... 389
of Chapter xxvi as to judgments, to apply to judgments of certain Appellate Courts, S. 424 407
regulating procedure in reference to directions of nature of *habeas corpus*, framing, S. 491 457
as to payment of expenses of complainant and witnesses, S. 544 ... 495
for certain purposes, power of High Courts to make: such rules not to be inconsistent with Code or other law; to be published in Gazette, S. 553 508

S.

SAFETY, human, issue of order in urgent cases of nuisance in view to prevention of danger to, S. 144 143
power of Local Government to prolong currency of order under section 144 in cases of danger to, S. 144 ... ... *ib.*
SALE of absconder's attached property, restrictions as to, S. 88 ... 102
of attached property, payment to absconder of net proceeds of, S. 89 ... 103

PAGE

SALE of stolen property, forged documents, &c.; search of place used for, S 98 108
of property in view to recovering costs of removing nuisance, S. 140 140
put up by authority of public servant, charge of obstructing, S. 221, Ill. 242
after attachment, of moveable property of jurors and assessors, S. 332 .. 321
of immoveable property for recovery of fine, issue of warrant for, S. 386 371
beyond jurisdiction, recovery of fine by, S. 387 373
of property seized by police, when no claimant appears, S. 524 ... 479
when perishable or when sale would benefit owner: treatment of proceeds of sale, S. 525 480
under section 524 or 525: proceedings not vitiated when sale ordered by Magistrate not empowered, S. 529 ... 485
under section 88, void when ordered by Magistrate not empowered, S. 530 486

SANCTION, previous, required to alteration of number of Sessions Divisions or of Districts, S. 7 45
to delegation of authority to appoint "Special Magistrates," S. 14 50
to framing of rules for guidance of Presidency Magistrates, S. 16 52
of Governor General in Council required to prosecutions for acts done under Chapter ix, S. 132 131
cognizance of certain offences not to be taken without previous, S 195 207
nature of, necessary to prosecutions for above offences, *ib.* ... *ib.*
given under section 195, may be revoked, *ib.* ... ... *ib.*
cognizance of offences charged against Judges and public servants, not to be taken without previous, S. 197 210
stay of proceedings on alteration of charge, if prosecution of offence in altered charge require previous, S 230 216
required by section 195, finding, sentence or order when reversible by reason of want of, S. 537 490
previous, of Governor General in Council, required to rules for payment of expenses of complainant and witnesses, S 544 ... 495
previous, of Governor General in Council, required to rules by Fort William High Court for inspection of records of subordinate Courts, S. 553 508
of Local Government, required to rules of certain other High Courts for same purpose, *ib.* ... ... *ib.*
previous, of Local Government, required to rules of certain other High Courts for other purposes, and to forms prescribed by same Courts, S. 553 508

SEALING of summons, S. 68 90
of warrant, S. 75 94

SEALS, false, search of place suspected to contain, S 98 108
counterfeit, joinder of charges in respect of possessing, &c., S 235, Ill. 249

SEARCH of place in view to effecting an arrest: procedure where ingress not obtainable, Ss. 47, 48 76
of arrested persons, S. 51 77
by Postal Department for document in its custody, on requisition of certain officers, S. 95 106

PAGE

SEARCH-WARRANT when may be issued, S. 96 107
power to restrict, S. 97 108
for inspection of place suspected to contain stolen property, forged documents, &c.; issue of, S. 98 ... *ib.*
disposal of things found beyond jurisdiction in execution, of, S. 99 110
for discovery of persons wrongfully confined, S. 100 ... *ib.*
persons in charge of closed place, to allow search by holder of, S. 102 111
procedure when ingress into closed place refused to holder of, *ib.* ... ... *ib.*
search under, to be conducted in presence of witnesses: list to be made of things found, S. 103 ... *ib.*
occupant of place searched to be permitted to attend during search, *ib.* ... ... *ib.*
in his presence, power of Magistrate to direct, S. 105 ... 112
by police for false weights or measures, S. 153 155
by or under orders of Police-officer, S. 165 169
warrants, provisions of Code as to, to apply to searches made by or under orders of a Police-officer, *ib.* 170
warrant, power to require officer in charge of another Police-station to issue, S. 166 171
procedure by officer in charge of Police-station issuing, at request of officer in charge of another station, *ib.* ... ... *ib.*
warrant issued by Magistrate not empowered: proceedings not vitiated, S. 529 485
for letter or telegram; proceedings void when Magistrate not empowered issues, S. 530 486
form of warrant to search after information of a particular offence, Sch. V. 8 606
form of warrant to search suspected place of deposit, Sch. V. 9 ... *ib.*

SEARCHING OF WOMEN: search how to be made, S. 52 77

SECURITY for appearance of person arrested under warrant, S. 76 ... 96
arrested under warrant by landholders, &c. S. 78 97
arrested under warrant, speedy arraignment before Court, in absence of, S. 81 98
arrested under warrant in another jurisdiction, S. 85 99
arrested under warrant, procedure of Magistrate in another jurisdiction in reference to, S. 86 100
for good behaviour of vagrants and suspected persons; issue of order to show cause, S. 109 116
for good behaviour of notorious offenders; issue of order to show cause, S. 110 117
for keeping the peace or for good behaviour, form of inquiry as to truth information in case of order for, S. 117 122
for keeping the peace or for good behaviour, passing, after inquiry, order for, S. 118 124

PAGE

SECURITY under section 118, not to be greater than that mentioned in order under section 112, S. 118 124
under section 106 or 118, commencement of period for currency of, S 120 125
under section 106 or 118, procedure on disobedience to order for, S 123 126
for keeping the peace, kind of imprisonment awardable on failure to give, *ib.* 127
for good behaviour, kind of imprisonment awardable on failure to give, *ib.* ... ... *ib.*
release to person imprisoned for failure to give, S. 124 ... *ib.*
report to High Court or Court of Session in view to release of person imprisoned for failure to give, *ib.* ... ... *ib.*
fresh, for peaceable conduct or for good behaviour, on discharge of surety, S. 126 128
original: fresh security on discharge of surety for peaceable conduct or for good behaviour, to be of same description as, *ib.* ... ... *ib.*
for appearance of accused before Magistrate on a fixed day; taking, on completion of police investigation, S. 170 173
other than his own bond, no complainant or witness to be required to give, S. 171 175
for good behaviour, appeal from order requiring, S. 406 ... 396
for keeping the peace, no appeal in petty cases or from summary convictions when punishment is combined with order for, S. 415 400
for lunatic accused, pending inquiry or trial, S. 466 ... 435
by relative or friend of lunatic accused, either before or after trial, S. 475 442
for appearance may be taken from accused in cases of contempt, &c., mentioned in section 195, S. 476 443
from accused in cases of contempt mentioned in section 480, S. 482 449
for keeping the peace; proceedings void when Magistrate not empowered demands, S. 530 486
for good behaviour; proceedings void when Magistrate not empowered demands, *ib.* ... ... *ib.*
for keeping the peace, form of warrant of commitment on failure to find, Sch. V. 13 608
for good behaviour, form of warrant of commitment on failure to find, Sch. V. 14 ... ... *ib.*
forms of warrant to discharge person imprisoned on failure to give Sch. V. 43 ... ... 609, 622
SEIZURE of absconder's moveable or immoveable property, S. 88 101
by police of false weights and measures, S. 153 155
by police; Magistrate to whom property has been referred under section 517, to deal with it as with a, S. 518 476
by police of property taken under section 51 or stolen; procedure, S. 523 478
SENTENCES High Courts may pass any sentence authorized by law, S. 31 ... 60

PAGE

SENTENCES Sessions, Additional Sessions, and Joint Sessions Judges may pass any sentence authorized by law, S. 31 60
of death, passed by Sessions, Additional Sessions, or Joint Sessions Judges; confirmation of High Court required to, *ib.* ... *ib.*
of death, or transportation, or of imprisonment for more than seven years; Assistant Sessions Judges not to pass, *ib.* ... *ib.*
of imprisonment for more than three years, subject to confirmation by Sessions Judge, when passed by Assistant Sessions Judge, *ib.* ... ... *ib.*
which may be passed by different Courts of Magistrates, S. 32 ... 61
Court of any Magistrate may pass combined, *ib.* ... ... *ib.*
proviso as to award of imprisonment in default of fine passed as part of a substantive sentence, S 33 62
imprisonment in default of fine may be in addition to substantive sentence for maximum term awardable, *ib.* ... ... *ib.*
which may be passed by Courts of District Magistrates specially empowered, S. 34 64
of imprisonment for more than three years passed by Courts of District Magistrates specially empowered, subject to confirmation by Sessions Judge, *ib.* ... ... *ib.*
SENTENCE in case of simultaneous conviction of several offences, S. 35 ... 65
aggregate, passed on simultaneous conviction of several offences deemed a single sentence for confirmation or appeal, *ib.* ... *ib.*
ordering security to keep the peace, when passing, S. 106 112
of imprisonment, period for security under section 106 or 118 to commence on expiration of, S. 120 125
passing, in summons-cases, S. 245 257
in warrant-cases, S. 258 268
or other final order, to be entered in record of summary trial, S. 263 275
record in summary trials where there is an appeal, to be made before passing, S. 264 277
passing, on conclusion of jury trials before Court of Session, S. 306 309
when Judge does not agree with the verdict, *ib. note* ... *ib.*
which may be passed by High Court dealing with case in which Sessions Judge had disagreed with verdict of jury, S. 307 ... 309
of sufficient severity, procedure when Magistrate cannot pass: Magistrate receiving case from him may pass sentence, S. 349 ... 341
SENTENCES under section 35 to be considered as one sentence for purpose of recording evidence in Presidency Magistrates' Courts, S. 362 ... 353
of fine, judgment in case of, may be pronounced in presence of accused's pleader, S. 366 357
of death, direction to be given in, S. 368 359
SENTENCE, High Court may confirm, or pass a new one, S. 376 ... 365
submitted to Sessions Judge for confirmation; procedure, S. 380... 366
any Judge or Magistrate passing, or his successor in office, may issue distress-warrant, S. 389 383
SENTENCES on escaped convict, execution of: comparative severity of various punishments, S. 396 387
SENTENCE on offender already sentenced for another offence, commencement of, S. 397 388
return of warrant to Court on execution of, S. 400 390

PAGE

SENTENCE appeal from conviction on accused's own plea, limited to extent or legality of, S 412 399
Court hearing appeal against acquittal may find accused guilty and may pass, S. 423 405
Appellate Court may reverse, reduce or alter nature of sentence, or may maintain it while altering the finding, *ib.* .. .. *ib.*
power of enhancing on appeal no longer exists, *ib. note* ... 406
alteration of, by High Court Judges reviewing case submitted by another Judge of the Court, S. 434 411
SENTENCES which may be passed on European British subjects by mufassal Magistrates, S. 446 421
which may be passed on European British subject by Court of Session; procedure when Judge finds his powers inadequate, S. 449 422
SENTENCE, passing and recording, in certain cases of contempt, Ss. 480, 481 .. .. 447, 448
Appellate Court may alter, in contempt-case, S 486 451
on proceedings recorded by another Magistrate; void when passed by a Magistrate not empowered, S. 530 ... 486
passed on proceedings in wrong place, when to be set aside, S 531 487
when no charge has been framed, when invalid, S. 535 489
when reversible by reason of error, omission or irregularity in charge or proceedings, S. 537 490
SERVANT of Government or a Railway Company, service of summons upon, S 72 92
SERVICE of summons, of issue warrant on non-appearance after proof of due, S. 90 104
of summonses, provisions in Chapter vi generally applicable to, S. 93 105
of summons issued under section 111, copy of order made under section 112 to be delivered on, S. 115 122
of order for removal of nuisance, manner of, S. 134 136
in urgent cases, manner of, S. 144 143
of notice in due time impracticable, order in urgent cases of nuisance may be passed *ex-parte* when, *ib.* ... ... *ib.*
SESSIONS DIVISIONS, Provinces to be, or to consist of Sessions Divisions, S. 7 45
to be Districts, or to consist of Districts, *ib.* ... *ib.*
alterations in constitution of, *ib.* ... ... *ib.*
present, maintained, *ib.* ... ... *ib.*
establishment of Court of Session for each Division, S. 9 46
power to order cases to be tried in different, S. 178 ... 192
SESSIONS JUDGES, appointment of, S. 9 46
subordination of Assistant Sessions Judges to, S. 17 ... 54
non-subordination of Magistrates to, *ib.* ... ... *ib.*
may pass any sentence authorized by law, S 31 .. 60
confirmation of High Court required to sentences of death passed by, *ib.* ... ... *ib.*
Assistant Sessions Judges' sentences of imprisonment for more than three years, to be confirmed by, *ib.* .. *ib.*
SESSIONS JUDGE, sentences of imprisonment for more than three years, passed by Court of District Magistrate specially empowered, to be confirmed by, S. 34 64

PAGE

SESSIONS JUDGE, and Collector or other officer, to make out list of jurors and assessors for Court of Session, S. 321 318
to hear objections to, and to revise list of jurors and assessors for Court of Session, S. 324 319
manner of recording evidence in inquiries by, and in trials before indicated, S. 354 344
to inform person sentenced to death of period allowed for appeal, S. 371 361
procedure by, in reference to case submitted for confirmation of sentence, S. 380 366
appeals to, by whom to be heard, S. 409 398
appeal from sentence of, S. 410 ... ... *ib.*
not to have jurisdiction over European British subjects unless he is one himself, S. 444 420
not being an European British subject; procedure by committing Magistrate, S. 450 422
ADDITIONAL, appointment of, S 9 46
may pass any sentence authorized by law, S. 31 ... 60
confirmation of High Court required to sentences of death passed by, *ib.* ... ... *ib.*
cases to be tried by, S. 193 205
may hear appeals to Court of Sessions, S. 409 ... 398
appear from sentences of, S. 410 ... ... *ib.*
SHERIFF'S return of *cepi corpus*, certain High Courts may direct that body of defendant be brought in on, S. 491 457
SHOWING CAUSE against security for keeping the peace, order for, S. 107 ... 114
for good behaviour of vagrants, &c. S. 109 116
for good behaviour of habitual offenders, S. 110 117
under section 107, 109 or 110, contents of order for, S. 112 119
against furnishing security to keep the peace; power to dispense with attendance of person receiving order for, S. 116 122
against order for removal of nuisance, appearance in view to, S. 135 136
against order for removal of nuisance; procedure, failing appearance in view to, S. 136 ... ... *ib.*
against order for removal of nuisance, procedure on, S. 137 137
against conviction in trials of summons-cases, accused when to be given an opportunity of, S. 242 ... 255
in trials of summons-cases, accused when to be convicted on his own admission after having an opportunity of, S. 243 ... 256
accused after discharge to have an opportunity of, against commitment by higher Court, S. 436 412
party to be called upon to show cause against payment of penalty of bond: procedure when sufficient cause is not shown, S. 514 473

PAGE

SIGNATURE: of receipt for summons, S. 69 92
by member of summoned person's family of receipt for summons, S. 70 ... ... *ib.*
of warrant, S. 75 94
by witnesses of list of things found under search-warrant, S. 103, 111
of information concerning commission of cognizable offence, S. 154 156
to confessions before inquiry or trial, manner of, S. 164 ... 167
by Police-officer and witnesses of report on sudden or unnatural death, S. 174 178
of complainant's examination, by himself and by Magistrate, S. 200 215
of record or judgment in summary trials held by Benches, when prepared by a clerk, S. 265 279
of revised list of jurors and assessors for Court of Session, S. 324 310
of orders postponing or adjourning proceedings, S. 344 ... 334
of record of evidence in mufassal, Ss. 355, 356, 357, ... 345, 346, 347
of evidence by Presidency Magistrates, S. 362 ... 353
of accused's examination, S. 364 354
of Magistrate's or Judge's memorandum of accused's examination, *ib.* ... ... *ib.*
of judgment, S. 367 358
of new sentence or order passed by High Court in place of sentence submitted for confirmation, S 377 365
of copy of High Court's confirmation order sent to Court of Session, S. 379 366

SIMPLE IMPRISONMENT, the only kind awardable on failure to give security for keeping the peace, S. 123 127
discretion as to awarding, on failure to give security for good behaviour, *ib.* ... ... *ib.*
sentence of rigorous imprisonment to be deemed severer than one of, S. 396 387
commutation of sentence to one of, S. 402 ... 392

SITTINGS OF HIGH COURT, time of holding, S. 334 322
place of holding, S. 335 323
notice of, *ib.* ... ... *ib.*

SOLDIERS, requisition on officer commanding, for dispersion of assembly, S. 130 131
protection of, against prosecution for acts done under Chapter ix, S. 132 ... ... *ib.*
copy of conviction of, to be sent to Military Department, S. 245 *note* 257

SOLITARY CONFINEMENT, Courts of Magistrates which may award, S. 32 ... 61
District Magistrates specially empowered may award, S. 34 64
comparative severity of sentences with or without, and other sentences, S 396 387

SPECIAL JURORS ordinarily not to be summoned more than once in six months, S. 315 315

STAMPS, counterfeit, search of place suspected to contain, S. 98 ... 108
trial of persons previously convicted of certain offences relating to, S. 348 340

PAGE

STANDING COUNSEL may conduct prosecution without obtaining special permission, S. 495 461
STATE cognizance of offences against the, not to be taken except by authority of the Governor General in Council, &c., S. 196 210
STATEMENT by Court as to publication of proclamation requiring appearance of absconder, S. 87 100
of material facts; order for removal of nuisance in urgent cases, to contain, S. 144 143
of Magistrate's grounds for proceeding; order requiring appearance of parties to dispute concerning land, &c., to contain, S. 145 146
STATEMENTS of claims as to possession; order to parties to dispute concerning land, &c., to put in, S. 145 146
of claims as to possession, of parties to dispute concerning land, &c.; Magistrate to peruse, *ib.*... ... ... *ib.*
STATEMENT of reasons, to be furnished when no local investigation into suspected cognizable offence is made, S. 157 158
STATEMENTS of witnesses at police investigation, record of, S. 161 ... 162
of witnesses at police investigation, not to be signed nor admitted in evidence; S. 162 ... ... *ib.*
voluntary, during police investigation, not to be prevented, S. 163 164
made before inquiry or trial, record of, S. 164 167
by accused, record of, S. 209 *note* 228
made by any person under pardon, may be used as evidence against him, S. 339 328
made by offender, record of, in certain cases of contempt, Ss. 481, 482 ... ... 448, 449
of accused persons, record of: procedure when provisions of section 164 or 364 have been fully complied with, S. 533 ... 488
STATEMENT of offence, to be delivered to Military authorities when offender is handed over for trial by Court-martial, S. 549 507
STATEMENTS, power of certain High Courts to make rules for subordinate Courts in reference to preparation and transmission of, S. 553 508
STATIONS: military bazars at cantonments and stations occupied by Madras and Bombay troops, S. 1 38
See *Police-station.*
STATUTES: 24 & 25 Vic, cap. 104, s. 15; directions for trial in different Sessions Division not to be repugnant to any direction under, S. 178 192
24 & 25 Vic., cap. 104; saving of provisions of letters patent granted under, S. 194 206
24 & 25 Vic., cap. 104; "High Court," as used in Chapter xxiii, means a High Court of Judicature established under, S. 266... 279
39 & 40 Vic., cap. 46, s. 3; saving of High Court's power to issue commissions under, S. 504 467
24 & 25 Vic., cap. 104, s. 15; saving of, in reference to forms in Schedule V. S. 554 509
repealed: Sch. I 513
STAY of execution of whipping owing to convict's ill-health, S. 394 ... 385
of inquiry or trial, pending return of commission, S. 508 ... 469
of order for disposal of property, S. 520 477

PAGE
STEALING, offence of, where triable, S. 181 195
SUB-DIVISION, definition of, S. 4 40
SUB-DIVISIONS, constitution and alteration of, S. 8 45
existing, maintained, *ib.* ... ... *ib.*
SUB-DIVISION, power to place Magistrate in charge of; and to relieve him of such charge, S. 13 49
subordination to Sub-divisional Magistrate of Benches exercising powers in a, S. 17 53
SUB-DIVISIONAL MAGISTRATE: corresponding expression in former Acts, S. 3 39
who is a, S, 13... 49
subordination of certain Magistrates to, S. 17 54
ordinary powers of, S. 36 68
report of apprehensions to, S. 62 88
may direct warrant of arrest to landholders, &c, S. 78 97
authorization by, of search of place suspected to contain stolen property, forged documents, &c. S. 98 108
may issue search-warrant for discovering of persons wrongfully confined, S. 100 ... 110
power of Court of, to require security for keeping the peace on conviction, S. 106 ... 112
power of, to issue order to show cause against security for keeping the peace before conviction, S. 107 114
power of, to issue order to vagrants and suspected persons to show cause against security for good behaviour, S. 109 ... 116
power of, to issue order to habitual offenders to show cause against security for good behaviour, S. 110 117
discharge by, of sureties to bond for peaceable conduct or for good behaviour, S. 126 ... 128
power of, to make conditional order for removal of nuisance, S. 133 132
orders made by, under section 133 not to be called in question by Civil Courts, *ib.* ... 133
power of, to prohibit repetition or continuance of nuisance, S. 143 142
power of, to issue order absolute at once in urgent cases of nuisance, S. 144 ... 143
procedure by, on receipt of information as to dispute concerning land, &c., which is likely to cause breach of peace, S. 145 146
attachment by, of land, &c., occasioning dispute, S. 146 151
procedure by, in reference to disputes concerning easements, &c., S. 147 ... 152
power of, to order local inquiry into disputes concerning land, &c., S. 148 ... 153
Police-officer's report on sudden or unnatural death, to be forwarded to, S. 174 ... 178

PAGE

SUB-DIVISIONAL MAGISTRATE may hold inquests, S. 174 179
power of, to issue process for offence committed beyond his local jurisdiction, S. 186 ... 198
cognizance of offences by, S. 191 201
may transfer case after taking cognizance, S. 192 203
may commit to Court of Session and High Court, S. 206 223
submission of proceedings to, when Magistrate cannot pass sentence sufficiently severe: his powers, S. 349 311
of the second class, appeal from sentence under section 349 by, S. 407 396
empowered by Local Government, may call for records of inferior Courts: when to submit same to District Magistrate, S. 435 ... 411
may pass orders for maintenance of wives and children, and appoint persons to receive payments; and may enforce such orders, S. 488 453
may alter rate of allowance sanctioned under section 488, S. 489 456
appointment of Public Prosecutors by, S. 492 458
order for disposal of property may take form of reference to, S. 518 ... 476
property seized by Police may be sold under orders of, S. 524 479
may withdraw or refer cases, S. 528 484

SUBJECTS, Native Indian, may be tried for offences committed beyond British India, S. 188 199
See *European British Subjects.*

SUBORDINATE COURTS, power of High Courts to make rules for inspection of records of, for regulating practice and proceedings of, and for keeping books, &c., and preparing and transmitting returns and statements, by, S. 553 ... 508
See *Courts.*

SUBORDINATE MAGISTRATE, release of person imprisoned by, for failure to give security, S. 124 127
any Magistrate may rescind or alter orders made in urgent cases of nuisance by a Magistrate subordinate to himself, S. 144 143
may apply to District Magistrate for issue of commission, S. 506 468
FIRST CLASS: corresponding expression in Code, S. 3 39
SECOND CLASS: corresponding expression in Code, *ib.* ... ... *ib.*
See *Magistrate.*

SUBORDINATE POLICE-OFFICER, deputation of, to arrest without warrant, S. 56 85
to communicate information of design to commit cognizable offence to his superior, S. 150 154

PAGE

SUBORDINATE POLICE-OFFICER, deputation of, to investigate suspected cognizable offence: when deputation may be dispensed with, S. 157 158
deputation of, to conduct search, S. 165 ... 169
holding investigation, to submit report, S. 168 178
See *Police-officer.*

SUB-REGISTRAR under Registration Act, 1877, to be deemed a Court when Local Government so directs, S. 483 449
under Registration Act, 1877; appeals from convictions by, in contempt cases, to whom to lie, S. 486 451

SUBSISTENCE, arrest of persons having no ostensible means of, S. 55 ... 83
issue of order to person having no means of, to show cause against security for good behaviour, S. 109 116

SUCCESSOR to Judge or Magistrate passing a sentence, may issue distress-warrant, S. 389 383

SUICIDE, Police to inquire into and report cases of, S. 174 178
abetment of: form of charge, Sch. V. 28 615

SUMMARY trials, Magistrates who may hold, and for what offences, S. 260 ... 270
not to be held in cases in which a District Magistrate exercises the special powers conferred by section 34 *ib.* 271
trial of certain offences, authority to confer on certain Benches power of, S. 261 274
trials, procedure for summons and warrant-cases applicable, with certain exceptions to, S. 262 275
record in, where no appeal lies, S. 263 ... ... *ib.*
where there is an appeal, S. 264 277
language of record and judgment in, S. 265 ... 278
Local Government may allow clerk to prepare records or judgments of Benches in, *ib.* 279
convictions, certain no appeal from, S. 414 399
referred to in section 414; when appeal may be brought against, S. 415 400
rejection of appeal, S. 421 404
trial; void when held by a Magistrate not empowered, S. 530 ... 486

SUMMING-UP, case for prosecution, S. 289 297
defence, S. 290 299
evidence, in charge to jury, S. 297 302
Judge may in course of, express to jury his opinion upon questions of fact or of mixed law and fact, S. 298 ... 303

SUMMONING jury to inquire into propriety of order for removal of nuisance, S. 138 138
persons to attend at police investigation into sudden or unnatural death, S. 175 190
defence-witnesses, on commitment of accused, S 216 ... 232
may be left to Clerk of the Crown, *ib.* ... *ib.*
Magistrate may refuse to summon, or may require deposit for expenses, *ib.* ... 233
supplementary witnesses after commitment, Magistrate's power of, S. 219 239

PAGE

SUMMONING witnesses on application of complainant or accused in summons-cases; Magistrate may be require preliminary deposit for expenses, S. 244 ... 256
of accused in warrant-cases; Magistrate may require preliminary deposit for expenses, S. 257 268
witnesses not named at first instance, right of accused as to, S. 291 300
jurors for High Court sessions: number to be summoned, S. 315 315
outside Presidency-town, S. 316 316
Military jurors for High Court sessions, S. 317 ... .. *ib.*
jurors and assessors for Sessions Court sessions: number to be summoned, S. 326 320
a new set of jurors for Sessions Court, S. 327 ... *ib.*
and empanelling jurors for trial of Europeans and Americans, S. 462 432
witnesses for examination or commission, S. 503... ... 466
medical witness whose deposition has been taken, power of, S. 509 469
power to summon material witness at any stage of proceedings, S. 540 492
jurors or assessors: form of precept to Magistrate, Sch. V. 32 ... 618
SUMMONS, form of, S. 68 90
by whom served, *ib.* ... ... *ib.*
fees for, S. 68 *note* ... ... *ib.*
how served, S. 69 92
signature of receipt for, *ib.* ... ... *ib.*
service, when person summoned cannot be found, S. 70 ... *ib.*
signature by member of summoned person's family of receipt for, *ib.* *ib.*
affixing duplicate of, on house of person summoned, S. 71 ... *ib.*
service of, or servant of Government or a Railway Company, S. 72 *ib.*
service of, on soldier, S 72 *note* 93
service of, outside local limits of Court's jurisdiction, S. 73 ... 93
proof of service of, outside local limits of Court's jurisdiction, S. 74 . *ib.*
when serving officer not present at hearing of case, *ib.* ... ... *ib.*
issue of warrant in lieu of, or in addition to, S. 90 104
power of Court to take bond for appearance of person for whose appearance it may issue, S. 91 105
provisions in Chapter vi generally applicable to, S. 93 ... ... *ib.*
document or other things, S. 94 106
under section 94 issue of search-warrant in place of, S. 96 ... 107
attendance at Court of witnesses to search, not to be required without special, S. 103 111
to party required to show cause under section 107, 109 or 110; issue of, S. 114 121
issued under section 114, to be accompanied by copy of order under section, 112, S. 115... 122
issued under section 114, inquiry as to truth of information on appearance of party to, S. 117 ... ... *ib.*

PAGE

SUMMONS issue of, on application of surety to cancel bond for peaceable conduct or for good behaviour, S. 126 128
order for removal of nuisance, to be served in same manner as, S. 134 136
under section 94, search by or under orders of Police-officer, failing efficacy of, S. 165 169
for appearance, Magistrate when to issue, S. 204 220
fee chargeable on, *ib. note* ... ... *ib.*
finding in summons-cases not limited by, S. 246 258
to jurors and assessors, form of, S. 328 321
offenders attending Court may be proceeded against as though they had been summoned, S. 351 343
finding sentence or order when reversible by reason of error, omission or irregularity in, S. 537 490
distress not illegal nor distrainer a trespasser because of defect in form of, S. 538 491
Table showing for certain offences whether a warrant or a summons should ordinarily issue in the first instance, Sch. II ... 517
to an accused person, form of, Sch. V. 1 603
on information of probable breach of the peace, form of, Sch. V. 12 607
to a witness, form of, Sch. V. 31 617
to juror or assessor, form of, Sch. V. 33 618
SUMMONS-CASE, definition of, S. 4 43
SUMMONS-CASES, trials in; inquiry as to truth of information regarding apprehended breach of the peace, to be conducted as, S. 117 ... 122
procedure to be observed in trials of, indicated, S. 241 ... 255
procedure for, applicable with certain exceptions, to summary trials, S. 262 275
tried by mufassal Magistrates, record of evidence in, S. 355 345
discretion as to manner of recording evidence in, S. 358 349
copy of judgment in, not to be given free of cost, S. 371 ... 361
SUPPLEMENTARY summons for jurors for High Court sessions, S. 315 ... 315
or assessors for Sessions Court sessions, S. 327 ... 320
SURETIES, discharge of persons arrested without warrant, on their giving a bond, with or without, S. 63 89
appearance of person arrested under warrant, S. 76 96
bond, with or without, for appearance of person present in Court, S. 91... 105
to bond for keeping the peace on conviction, S. 106 ... 112
before conviction, S. 107 114
for good behaviour of vagrants, &c., S. 109 ... 116
habitual offenders, S. 110 ... 117
required to bond; order for showing cause under sections 107, 109 or 110 to state number, character and class of, S. 112 ... 119
bond, with or without, for keeping the peace or for good behaviour; passing, after inquiry, order for execution of, S. 118 124
bond for keeping the peace or for good behaviour, to be executed only by, when Principal is a minor, *ib.* ... ... *ib.*
offered to bond for good behaviour, rejection of: reasons to be recorded, S. 122 126

PAGE

SURETIES, to bond for keeping the peace or for good behaviour, discharge of, S 126 128
conditions of bail-bond, S. 499 461
insufficient; procedure, S. 501 465
application of, for discharge; procedure, S. 502 ... ... *ib.*
SURETY, form of notice to, on breach of bond, Sch. V. 45 623
on forfeiture of bond for good behaviour, Sch. V. 46 *ib.*
warrant of attachment against a, Sch. V. 47 ... ... *ib.*
of an accused person admitted to bail, form of warrant of commitment of, Sch. V. 48 624
SURGEONS, when exempted from serving as jurors or assessors, S. 320 ... 317
See *Civil Surgeon.*
SUSPENSION of sentence, pending appeal, S. 426 408
by revising Court, S. 438 411
SUSPICION of cognizable offence, police may arrest without warrant, on, S. 54 78
power of police to arrest without warrant possessor of property suspected to be stolen, *ib.* ... ... *ib.*
power of police to arrest without warrant suspected deserter from Army or Navy, *ib.* ... ... *ib.*
of cognizable offence, procedure by police on, S. 157 ... 158
cognizance of offences upon, S. 191 201
proceedings void when Magistrate not empowered takes cognizance, upon, S. 530 486
SWEARING jurors, S. 281 290
juror or assessor as a witness, S. 294 301
Courts and persons before whom affidavits may be sworn, S. 539... 491

T.

TANK, conditional order for fencing, S. 133 132
Circular issued for guidance of Bengal Police in cases where a body is found in a, S. 174 *note*... 181
TECHNICAL TERMS, jury to determine meaning of, S. 299 305
TELEGRAM in Telegraph Department, proceedings void when Magistrate not empowered issues search-warrant for, S. 530 486
TELEGRAPH laws, offences against, may be inquired into and tried in Presidency-towns, S. 184 197
Department employés, exempted from serving as jurors or assessors, S. 320 317
TENT, included in "Place," S. 4 43
TERM for which bond to be in force; order for showing cause under section 107, 109 or 110 to state, S. 112 119
of bond for peaceable conduct or for good behaviour; fresh security, on discharge of sureties, for unexpired, S. 126 128
maximum, of remand on postponement or adjournment, S. 344 ... 334
of imprisonment to which offender may be sentenced in lieu of whipping, S. 397 386
how computed when convict has been released pending appeal, S. 426 408
in case of failure to pay penalty of bond, S. 514 ... 473
See *Bond; Imprisonment; Period.*

PAGE

TERMINATION of proceedings, date of, to be entered in record of summary trial, S. 263 275
TERRITORIES throughout which High Court may issue orders to produce person of European British subject, S. 458 427
TESTIMONY, see *Act*.
THEFT, charges of, Ss. 221, 223, 233, 237, 239, 1lls. 242, 243, 248, 252, 254
charge of, in case where it is doubtful what offence has been committed, S. 236 251
under Penal Code, sections 379, 380 and 381, may be tried summarily where the value of the property stolen does not exceed fifty rupees, S. 260 270
payment to innocent purchaser of money found on person convicted of, S. 519 476
theft after preparation to cause death; theft after preparation to cause restraint; theft after preparation to cause fear or hurt; forms of charges, Sch. V. 28 616
THIEF, issue of order to habitual, to show cause against security for good behaviour, S. 110 117
THIEVES, arrest of persons who are by repute habitual, S. 55 83
THINGS found under search-warrant issued at request of officer in charge of a Police-station, disposal of, S. 166 171
moveable, to be produced in evidence, to be forwarded, on commitment to Court of Session or High Court, S. 218 234
THING in respect of which offence committed, to be stated in charge, S. 222 243
THREAT: security for keeping the peace on conviction of threatening injury to person or property, S. 106 112
to induce confession, not to be made during police investigation, S. 163 164
THREATS not to be used to accused to induce or prevent disclosure, S 343 ... 333
THUG, certain persons bound to give information regarding resort of, S. 45 .. 73
offence of being a, and offence of being a thug and committing murder; where triable, S. 181 195
TIME of sitting, power to frame rules for Benches as to, S. 16 52
conditional order for removal of nuisance within a fixed, S. 133 ... 132
order to person causing nuisance, to appear at a fixed, *ib.* ... 133
specified, compliance with order for removal of nuisance within, S. 135 136
summoning jury to attend at fixed, for inquiry into propriety of order for removal of nuisance, S. 138 138
for return of verdict of jury for inquiry into propriety of order for removal of nuisance, fixing, *ib.* ... ... *ib.*
requiring performance within a specified, of act directed by order for removal of nuisance, on order being made absolute, S. 140 ... 140
procedure on absolute order for removal of nuisance not being obeyed within fixed, *ib.* ... ... *ib.*
procedure on jury inquiring into propriety of order for removing nuisance not returning verdict in proper, S. 141 141
due, order in urgent cases of nuisance may be passed *ex-parte* when notice cannot be served in, S. 144 144
fixing, for appearance of parties to dispute concerning land, &c. S 145 146
before commencement of inquiry or trial, power to record statements and confessions made at any, S. 164 167

PAGE

TIME, particulars as to, to be stated in charge, S. 222 243
of holding sittings of High Court, S. 334 322
of pronouncing judgment, S. 366 357
and place of execution of sentence of whipping, S. 390 383
for hearing appeal, notice of, S. 422 405
reasonable, to be allowed for substantiating claim to be dealt with as an European British subject, S. 453 423
See *Date*.

TITLES, official, powers may be conferred on classes of officials generally by their, S. 39 69

TOWN, proclamation requiring appearance of absconder, to be read and affixed in, S. 87 100
See *Presidency-town*.

TRADES, conditional order for suppression of noxious, S. 133 ... 132

TRANSFER of cases by District or Sub-divisional Magistrates, S. 192 ... 203
by Magistrate of the first class specially empowered, *ib.* ... *ib.*
of case, Magistrate not to examine complainant before, when complaint is presented in writing, S. 200 215
receiving Magistrate not bound to re-examine complainant on, *ib.* ... ... *ib.*
to a High Court; trials of cases on, may, if the Court so direct, be by jury, S. 267 279
of appeals by District Magistrate, S. 407 397
of trial of European British subject from Court of Session to High Court, S. 449 422
of lunatic prisoner to public Lunatic Asylum: appointment of commission thereupon; duties of commission, S. 474 ... 442
District Magistrate receiving contempt cases, &c., mentioned in section 195 may transfer them, S. 476 443
of criminal cases or appeals, power of High Court to order: grounds on which this power may be exercised; procedure to be observed by High Court when it tries case itself; applications for transfer, how made; payment by accused of prosecutor's costs; notice of application; saving of prosecutions of Judges and public servants, S 526 480
power of Local Government to order: receiving Court how to deal with case, S. 527 484
District or Sub-divisional Magistrate may withdraw and refer cases, S. 528 ... ... *ib.*
Local Government may authorize District Magistrate to withdraw classes of cases, *ib.* ... ... *ib.*
proceedings not vitiated when Magistrate not empowered transfers case, S. 529 486

TRANSLATION, English, of record of inquiry, to be forwarded, when commitment is to High Court, S. 218 234
authenticated, of evidence given in English in mufassal, when to form part of record, S. 356 346
of judgment, to be given to accused, S. 371 361
when to be filed with the record, S. 372 ... 363

PAGE

TRANSPORTATION, offences punishable with, "Warrant-cases," S 4 ... 43
Assistant Sessions Judges may not pass sentences of, for more than seven years, S. 31 60
commencement of, when imprisonment and transportation are awarded on a simultaneous conviction of several offences, S. 35 65
sentences of, can be for not less than seven years, S. 35 *note* 66
sentence of, for life as an aggregate punishment, *ib.* .. *ib.*
offences not punishable with, may be tried summarily, S 260 270
for life, High Court may commute capital sentence on pregnant woman to, S. 382 368
execution of sentences of, S. 383 369
sentence of, passed on escaped convict, when to take effect: such sentence to be deemed severer than one of imprisonment, S 396 387
sentence of, on offender already sentenced for another offence; when to commence, S. 397 388
commutation of sentence of, S 402 392
for life; commitment of European British subject charged in mufassal with offence punishable with, to be made to High Court, S. 447 421
for life, High Court when may try European British subject charged in mufassal with offences not punishable with, S. 448 . ... *ib.*

TREASURE-TROVE Instructions of the Government of Bengal with regard to property in, S. 523 *note* 478

TRIAL, regulation of place and modes of, S. 5 44

TRIALS, framing of rules regarding the constitution of Benches of Magistrates for conducting, S. 16 52

TRIAL, sentence in cases of conviction of several offences at one, S. 35 ... 65
cases involving heavy cumulative punishment, not necessarily to be sent to a higher Court for, *ib.* ... . *ib.*
summons to produce document or other thing required for the purposes of any, S. 94 106
procedure as to production of document in custody of Postal or Telegraph Department required for purposes of any, S. 95 ... *ib.*
issue of search-warrant when required for purposes of any, S. 96 ... 107

TRIALS in summons-cases, inquiry as to truth of information regarding apprehended breach of the peace, to be conducted as, S. 117 122
in warrant-cases, inquiry as to truth of information regarding apprehended breach of good behaviour, to be conducted as, except that no charge need be framed, *ib* ... ... *ib.*

TRIAL as to propriety of order for removal of nuisance, application for jury for, S. 135 136
under Chapter xv; police investigation into cognizable cases, limited to cases in which Court has power of, S. 156 158
power to record statements and confessions made at any time before commencement of, S. 164 167
record of confessions to be sent to Magistrate who is to conduct, *ib.* ... *ib.*

PAGE

TRIAL, Court may use police diaries at a, S. 172 176
or inquiry, ordinary place of, S. 177 191
in any Sessions Division, power to order, S. 178 192
in place where act is done or where consequence ensues, S. 179 ... *ib.*
place of, where act is an offence by reason of relation to another offence, S. 180 194
of offences of being a thug, belonging to a gang of dacoits, escape from custody, &c.; place of, S. 181 195
of criminal misappropriation and criminal breach of trust, place of, *ib.* *ib.*
of offence of stealing, where may be held, *ib.* .. .. *ib.*
place of, when scene of offence uncertain; when offence committed partly in one local area and partly in another; when offence continuing; and when offence consists of several acts done in different local areas, S. 182 195
of offence committed on a journey, place of, S. 183 196
TRIALS of offences against Railway, Telegraph, Post Office and Arms Acts may be held in Presidency-towns, S. 184 197
TRIAL, place of, to be decided by High Court in case of doubt, S. 185 ... *ib.*
of offence committed beyond British India, power to direct copies of depositions and exhibits to be received in evidence at, S 189 ... 200
before a Magistrate, accused not to be discharged on inquiry into sessions-case if Magistrate thinks he should be placed on, S. 209 ... 226
by Court of Session or High Court, custody of accused pending, S. 220 239
when may be proceeded with immediately after alteration of charge, S. 228 245
when may be suspended, on alteration of charge, S. 229 246
stay of, on alteration of charge, if prosecution of offence in altered charge require previous sanction, S. 230 ... ... *ib.*
recall of witnesses on alteration of charge after commencement of, S. 231 ... ... *ib.*
of summons-case procedure to be observed in, indicated, S. 241 ... 255
of warrant-cases procedure to be observed in, indicated, S. 251 ... 262
TRIALS before High Court, to be by jury, S 267 279
of cases transferred to a High Court may, if the Court so direct, be by jury, *ib.* 280
before Sessions Court, to be by jury or with assessors, S. 268 ... *ib.*
Local Government may order, to be by jury, S. 269 .. .. *ib.*
to be conducted by Public Prosecutor, S. 270 .. 281
before High Courts and Courts of Session, commencement of, S 271 284
by same jury or assessors of several offenders in succession, S. 272 ... 285
before High Court, number of jury in, S. 274 286
Court of Session, number of jury in, *ib.* ... ... *ib.*
before Court of Session of persons not Europeans or Americans, constitution of jury for, S. 275 287
by jury; procedure when juror ceases to attend, S 282... 291
trial to commence anew when a change has been made in the jury in consequence of a juror absenting himself, *ib.* ... *ib.*
with assessors; assessors how chosen, S. 284 ... ... *ib.*
procedure when an assessor is unable to attend, S. 285 *ib.*
proceedings to be stayed and new trial held when all the assessors absent themselves, *ib.* 292

PAGE

TRIALS, jury or assessors to attend until conclusion of, S. 295 302
of European British subjects by High Court, power to appoint place of, S. 336 323
of person who has accepted tender of pardon, S. 339 328
not to be stayed because accused does not understand the proceedings, S. 341 329
power to postpone or adjourn, S. 344 334
of persons previously convicted of certain offences against coinage stamp law and property, S. 348 340
procedure on detention of offender attending Court after commencement of, S. 351 343
(other than summary trials) in the mufassal, manner of recording evidence in, indicated, S. 354 344
of certain offences by first and second class Magistrates, record of evidence in, S. 355 345
of certain offences by first and second class Magistrates, discretion as to manner of recording evidence in, S. 358 349
of other cases in mufassal, record of evidence in, S. 359 ... *ib.*

TRIAL after previous acquittal or conviction, S. 403 392
Court hearing appeal against acquittal may direct commitment of accused, S. 423... 405
validity of, when person who is not an European British subject is dealt with as such, S. 455 426
by Magistrate; procedure on, when accused appears insane, S. 464 ... 433
by Court of cession or High Court of fact of unsoundness of mind, when accused is lunatic: such trial to be deemed part of accused's trial before the Court; postponement of trial after trial of fact of unsoundness, S. 465 434
postponed on account of accused's unsoundness of mind, resumption of, S. 467 436
to proceed when accused who has been insane is capable of making his defence, S. 468 437
procedure when accused is sane at time of, but was not so when he committed offence, S. 469 ... ... *ib.*
stay of, pending return of commission, S. 508... 469
in wrong place, effect of holding, S. 531 487
See *New Trial; Summary.*

TRIBUNAL, complaint when to be returned for presentation to proper, S. 201 217

TROOPS, military bazars at cantonments and stations occupied by Madras and Bombay, S. 1 38
See *Army; Soldiers.*

TRUTH of information regarding apprehended breach of the peace or of good behaviour, inquiry as to, S. 117 122
procedure when record of accused's examination is made conformable to what he declares is, S. 364 358

U.

UNITED KINGDOM of Great Britain and Ireland; certain persons naturalized, &c., in, "European British subjects," S. 4 ... 43

PAGE

UNLAWFUL measures with object of committing breach of the peace, security on conviction of person taking, S. 106... 112
ASSEMBLIES to disperse on command of Magistrate or officer in charge of Police-station, S. 127 129
dispersion of, by civil force, S. 128 130
military force, S. 129... ... *ib.*
procedure in reference to disperson of, by military force, S. 130... 131
power of military officer to disperse, S. 131 ... *ib.*
protection against prosecution for acts done in dispersing, S. 132 ... ... *ib.*
obstruction, conditional order for removal of, S. 133 ... 132
UNLAWFUL COMPULSORY LABOUR, compoundable, S. 345 336
UNLAWFULLY obtained, search of place suspected to contain property, S. 98... 108
UNNATURAL OFFENCE, Circular issued for guidance of Bengal police in cases of suspected, S. 174 *note* 182

V.

VACANT, duties of successor, on office of District Magistrate becoming, S. 11 46
VAGABONDS, arrest of, S. 55 83
VAGRANTS, European, may be arrested by police, S. 54 *note* ... 80
and suspected persons, issue of order to, to show cause against security for good behaviour, S. 109 116
European, security for good behaviour of, S. 111 ... 119
European British subject being, lose their privileges, S. 443 *note* 419
VAKIL of High Court, a "Pleader", when authorized, S. 4 42
VALIDITY of inquiry, commitment or trial when person who is not an European British subject is dealt with as such, S. 455 ... 427
VENDORS of stolen property, certain persons bound to report residence of, S. 45 73
VERDICT of jury for inquiry into propriety of order for removal of nuisance, fixing time for return of, S. 138 138
procedure on jury inquiring into propriety of order for removing nuisance not returning, S. 141 141
of jury, to be delivered by foreman, S. 280 289
of not guilty, when Court may direct jury to return, S. 289 ... 297
jury to return, S. 299 305
retirement of jury to consider, S. 300 306
of jury, delivery of, S. 301 ... ... *ib.*
delivery of, after retirement for further consideration, S. 302 *ib.*
to be given by jury on each charge, S. 303 307
Judge may question jury in order to ascertain, *ib.*... ... *ib.*
of jury, amending, S. 304 308
in High Court, when to prevail, S. 305 ... ... *ib.*
in Court of Session, when to prevail, S. 306 ... 309
procedure when Judge disagrees, S. 307 *ib.*
of jury may be altered or reversed on appeal, only on ground of misdirection, S. 423 406
VESSEL, included in "Place," S. 4 43

PAGE

VIEW, arrest by private persons of persons committing non-bailable and cognizable offence in their, S. 59 86
Police-officer may prevent injury to public property attempted in his, S. 152 155
by jurors or assessors, S. 293 300
jurors and assessors to be conducted back to Court after, *ib.* ... *ib.*
necessity of taking, a reason for High Court's exercising power of transfer, S. 526 480
VILLAGE, certain persons bound to give information regarding residence of receivers or vendors of stolen property in, S. 45 73
certain persons bound to give information regarding resort of thug, robber, escaped convict or proclaimed offender in, or in passage through, *ib.* ... ... *ib.*
certain persons bound to give information regarding commission of or intention to commit non-bailable offence in or near, *ib.* ... *ib.*
certain persons bound to give information regarding occurrence of sudden or unnatural death in, *ib.* ... ... *ib.*
in section 45, includes "village-lands", *ib.* 74
proclamation requiring appearance of absconder, to be read and affixed in, S 87 100
See *Heads of Villages; Police-officers.*
VILLAGE-HEADMAN, see *Heads of Villages.*
VILLAGE-WATCHMAN, bound to report certain matters, S. 45 73
VISITING a particular place, order in urgent case of nuisance may be directed to the Public when, S. 144 143
lunatic prisoners, S 472 441
VISITORS of Lunatic Asylums, to visit lunatic prisoners at least once in every six months, and to submit report to Local Government, *ib.* ... ... *ib.*
certificate by, that prisoner is capable of making his defence; procedure on: such certificate receiveable as evidence, S. 473 .. 441
certificate by, that prisoner might with safety be discharged, S. 474 ... 442
VOLUNTARY confession during police investigation, not to be prevented, S. 163 164
recording Magistrate to ascertain whether confession before inquiry or trial is, S. 164 167
VOLUNTARILY, see *Grievous Hurt; Hurt.*
VOLUNTEERS, requisition of assistance of persons not being for dispersion of assembly, S. 128 130
on officer commanding, for dispersion of assembly, S. 130 131
protection of, against prosecution for acts done under Chapter ix. S. 132 ... ... *ib.*
acting under military authority in accordance with an order under Chapter ix. to be deemed as not having thereby committed an offence, *ib.* .. .. *ib.*
VOYAGE, place of trial of offence committed on a, S. 183 196

W.

WAGING WAR against the Queen: form of charge, Sch. V. 28... ... 614

PAGE

WARRANT, name of offence and case for and in which a Police-officer may arrest without, S. 4 43
and in which a Police-officer may not arrest without, *ib.* ... ... *ib.*
of arrest, aid to person other than a Police-officer, executing, S 43 71
search of premises by holder of, S. 47 ... 76
procedure where ingress to premises not obtainable by holder of, S. 48 ... ... *ib.*
procedure where cannot readily be procured and ingress to premises for purpose of search not obtainable, *ib.* *ib.*
search of arrested persons when bail not taken, and whether arrest made under or without a, S. 51 77
ARREST WITHOUT,
when police may arrest without, S. 54 78
deputation of subordinate Police-officer to make an arrest without, S. 56 85
arrest in other jurisdiction without, S. 58 ... ... *ib.*
without: party to be taken before Magistrate or officer in charge of Police-station, S. 60 86
period of detention in custody in cases of, S. 61 ... 87
report to Magistrate, S. 62 88
arrest by Magistrate, or in his presence, of persons for whose arrest he is competent to issue, S. 65 89
OF ARREST
form of, S. 75 94
continuance of, *ib.* ... ... *ib.*
fee for, S. 75 *note* 94
security from persons apprehended under, S. 76 ... 96
to whom directed, S. 77 ... ... *ib.*
execution of, when directed to several persons, *ib.* ... *ib.*
direction to landholders, &c., of, S. 78 97
directed to a Police-officer; execution of, S. 79 ... *ib.*
notification of substance of, S. 80 98
speedy production before Court, of person arrested under, S. 81 ... ... *ib.*
where may be executed, S. 82 ... ... *ib.*
forwarded to Magistrate for execution outside jurisdiction, S. 83 ... ... *ib.*
directed to Police-officer for execution outside jurisdiction, S. 84 99
procedure on apprehension of person under, outside jurisdiction, S. 85 ... ... *ib.*
procedure of Magistrate on production of person under, outside jurisdiction, S. 86 100
proclamation for person absconding to prevent execution of, S. 87 ... . *ib.*
restoration of attached property on absconder's proving absence of intention to avoid execution of, S. 89 ... 103
in lieu of or in addition to summons, issue of, S. 90 ... 104
power of Court to take bond for appearance of person for whose arrest it may issue, S. 91... 105

PAGE

WARRANT issue of, on breach of bond for appearance, S. 92 105
provisions in Chapter vi. generally applicable to any, S 93 ... ... *ib.*
of person likely to commit breach of the peace, S. 108 116
directing production of party required to show cause under section 107, 109 or 110, when in custody; issue of, S. 114 .. 121
for arrest of party required to show cause under section 107, 109 or 113; issue of, *ib.* ... . *ib.*
issued under section 114 to be accompanied by copy of order under section 112, S. 115 122
inquiry as to truth of information, on execution of, S. 117 ... ... *ib.*
directing detention pending orders of higher Court; Magistrate when to issue, in case of failure to comply with order for security under section 106 or 118, S 123 126
issue of, on application of surety to cancel bond for peaceable conduct or for good behaviour, S. 126 128
arrest without, in view to preventing cognizable offence, S. 151 ... 155
search without, for weights and measures suspected to be false, S. 153 ... ... *ib.*
for appearance, Magistrate when to issue, S. 204 220
fee chargeable thereon, S. 204 *note* 222
accused, if in custody, to be remanded by; on postponement or adjournment of proceedings, S 344 334
issue of, in case of sentence of death, S. 381 367
for execution of sentence of transportation or imprisonment, to be forwarded to jail, S. 383 ... 369
of imprisonment direction of: with whom to be lodged, Ss. 384, 385 ... ... 370, 371
for levy of fine, issue of, S. 386 ... ... *ib.*
effect of, S. 387 373
who may issue, S. 389 383
to be returned to Court, on execution of sentence, S. 400 390
for levy of maintenance allowance, S. 488 453
of commitment, previous conviction may be proved by production of, S. 511 471
for attachment and sale of moveable property in view to recovering penalty of bond: issuing; where may be executed, S. 514 ... 473
Table showing for certain offences whether a warrant or a summons should ordinarily issue in the first instance, Sch. II. ... 517
of arrest: form of warrant, and of endorsement upon it, Sch. V. 2 603
of attachment to compel appearance, form of, Sch. V. 6 ... 604
in the first instance to bring up a witness, form of, Sch. V. 7 ... 606
to search after information of a particular offence, form of, Sch V. 8 ... ... *ib.*
to search suspected place of deposit, form of, Sch. V. 9 ... ... *ib.*
of commitment on failure to find security to keep the peace, form of, Sch. V. 13 608
of commitment on failure to find security for good behaviour, form of, Sch. V. 14 ... ... *ib.*

PAGE

WARRANT to discharge person imprisoned on failure to give security, forms of, Sch. V. 15, 43 ... . 609, 622
of attachment in case of dispute as to possession of land, &c.; form of, Sch. V. 23 612
of commitment on a sentence of imprisonment or fine if passed by a Magistrate, form of, Sch. V 29 616
of imprisonment on failure to recover amends by distress, form of, Sch. V. 30 617
of commitment under sentence of death, form of, Sch V. 34 ... 618
of execution on a sentence of death, form of, Sch V 35 ... *ib.*
after commutation of a sentence, form of, Sch V. 36 619
to levy fine by distress and sale, form of, Sch. V. 37 ... *ib.*
of commitment in certain cases of contempt when a fine is imposed, form of, Sch. V 38 620
by Magistrate or Judge for refusing to answer, in cases where there is no fine; form of, Sch. V 39 *ib.*
of imprisonment on failure to pay maintenance, form of, Sch. V. 40 621
to enforce payment of maintenance by distress and sale, form of, Sch. V. 41 ... ... *ib.*
to discharge a person imprisoned on failure to give security, Sch. V. 43 622
of attachment to enforce a bond, form of, Sch V. 44 ... *ib.*
against a surety, form of, Sch. V. 47 623
of the commitment of the surety of an accused person admitted to bail, form of. Sch. V. 48 624
to attach the property of the Principal on breach of a bond to keep the peace, form of, Sch. V. 50 ... ... *ib.*
of imprisonment on breach of bond to keep the peace, form of, Sch. V. 51 625
of attachment and sale on forfeiture of bond for good behaviour, form of, Sch. V. 52 ... ... *ib.*
of imprisonment on forfeiture of bond for good behaviour, form of, Sch V. 53 626
See *Arrest; Search; Process.*

WARRANT-CASE, definition of, S. 4 43

WARRANT-CASES, trials in; inquiry as to truth of information regarding apprehended breach of good behaviour, to be conducted as, S. 117 122
procedure to be observed in trial of, indicated, S 251 ... 262
procedure for, applicable, with certain exceptions, to summary trials, S. 262 275
tender of pardon may be made in, S. 337 323
officer taking evidence on commission to, have same powers as in trial of, S. 503 466

WATCHMAN, see *Village Watchman.*

WAY; conditional order for removal of obstruction or nuisance from, or for fencing tank or well adjacent to public, S. 133 132

WEAPONS, offensive, found upon an arrested person; seizure and disposal of, S. 53 78
and other articles connected with police investigation, when to be forwarded, S. 170 174

PAGE

WEAPONS, by which injuries were inflicted, to be mentioned in Police-officers' reports on sudden or unnatural deaths, S. 174 178
to be produced in evidence, to be forwarded, on commitment to Court of Session or High Court, S. 218 234
WEARING APPAREL, necessary, not to be taken away for arrested persons, S. 51 77
WEIGHTS AND MEASURES, inspection by police of, S. 153 155
false, seizure by police of, *ib.* ... ... *ib.*
what offences relating to, may be tried summarily, S 260 270
WELL, conditional order for fencing, S. 133 132
WHIPPING, Courts of Magistrates which may sentence to, S. 32 61
of District Magistrates specially empowered may sentence to, S. 34 64
offences not punishable with, may be tried summarily, S. 260 ... 271
sentence of; time and place of execution, S. 390 383
execution of sentence of, in addition to imprisonment, S. 391 ... *ib.*
in whose presence to be inflicted, *ib:* 384
mode of inflicting, S. 392 385
sentences not to be executed by instalments, S. 393 ... *ib.*
not to be inflicted if offender is not in fit state of health, S. 394 *ib.*
procedure when cannot be inflicted owing to offender's ill-health, S. 395 386
sentence of, when passed on escaped convict, to take effect immediately, S. 396 387
no appeal from orders of certain mufassal Courts awarding, except when combined with another punishment, Ss. 413, 415 ... ... 399, 400
summary conviction with sentence of, except when combined with another punishment, Ss. 414, 415 *ib.*
WINDOW, breaking open, in order to effect an arrest, S. 48 76
for purposes of liberation after entry into place in order to effect an arrest, S. 49 77
WITHDRAWAL of remaining charges on conviction on one of several: such withdrawal to have the effect of an acquittal, S. 240 ... 254
of complaint in summons-cases, S. 248 259
of pardon, S. 339... 328
of appeals, by District Magistrate, S. 407 397
of Public Prosecutor from prosecution: its effect, S. 494 ... 460
of case by High Court for trial before itself: procedure by High Court in trying such case, S. 526 480
of cases by District or Sub-Divisional Magistrate, S. 528 ... 484
Local Government may authorize District Magistrate to withdraw classes of cases, *ib.* ... ... *ib.*
proceedings not vitiated when Magistrate not empowered withdraws case, S. 529 485
WITNESSES, search under search-warrant to be conducted in presence of, S. 103 111
to search: to sign list of things found; not required to attend Court unless specially summoned, *ib.* ... ... *ib.*
Police-officer's power to require attendance of, S. 160 ... 161
examination of, by police, S. 161 162
at police investigation, statements of, not to be signed or admitted in evidence, S. 162 ... *ib.*
record of statements of, S. 164 ... 167

PAGE

WITNESSES, to be bound to appear when case is sent up by police, S. 170 ... 173
not to be required to accompany Police-officer to Court, S. 171 ... 175
not to be subjected to unnecessary restraint, *ib.* ... ... *ib.*
not to be required to give security other than their own bond, *ib.* *ib.*
recusant, may be forwarded to Court in custody, *ib.* ... *ib.*
police may summon, for investigation into sudden or unnatural death, S. 175 190
at investigation into sudden or unnatural death, not to be required to attend Magistrate's Court when no cognizable offence disclosed, *ib.* ... ... *ib.*
Calcutta High Court regarding examination of, by Magistrate, S. 208 *note* 224
to be summoned for his trial, accused to be required to give in a list of, S. 211 229
for defence at trial, further list of, *ib.* ... ... *ib.*
named in additional list given in by accused, examination by Magistrate of, S. 212 ... ... *ib.*
for defence, summons to, when accused is committed, S. 216 ... 232
summoning, may be left to Clerk of the Crown, *ib.*... 233
unnecessary, refusal to summon, or demand of deposit before summoning, *ib.* ... ... *ib.*
Magistrate, in cases committed to Court of Session or High Court, to take bonds for appearance of, S. 217 ... *ib.*
in cases committed to Court of Session or High Court; detention of, on refusal to attend or to execute recognizance, *ib.* ... 234
supplementary; power to summon and examine, after commitment, S. 219 239
recall of, on alteration of charge, S. 231 246
applied for on summons-case; Magistrate may require deposit for expenses of, S. 244 256
prosecution, for warrant-case; Magistrate to ascertain names of, to summon, S. 252 262
accused in warrant-case to be allowed to recall and cross-examine, S. 256 265
for defence, applied for on warrant-case; Magistrate may require deposit for expenses of, S. 257. 268
for prosecution, when to be examined by prosecutor, S. 286 ... 292
evidence of, at preliminary inquiry, when admissible, S. 288 ... 294
for prosecution, procedure after examination of, S. 289 297
for defence, when may be examined, S. 290 299
not named at first instance, right of accused as to examining and summoning, S. 291 300

WITNESS, examination of juror or assessor as a, S. 294 301
examination as a, of person accepting tender of pardon, S 337 ... 328
power to order postponement or adjournment on absence of a, S. 344 334

WITNESSES, examination of, by Magistrate receiving case from another who could not pass sufficiently severe sentence, S. 349 ... 341
re-summoning, when Magistrate is succeeded by another; discretionary with Magistrate, unless demanded by accused, S. 350... 342
when to be re-heard on detention of offender attending Court, S. 351 343

PAGE

WITNESSES, under examination, remarks respecting demeanour of, S. 363 ... 353
binding over, on trial of European British subject before Court of Session, to appear before High Court, S. 449 422
in cases of contempt. &c., mentioned in section 195 may be bound over, S. 476 443
mentioned in section 195; Court of Session may direct Magistrate to cause attendance of, S. 477 445
in case committed by Civil or Revenue Court, to be sent to Sessions Court by Magistrate, S. 479 447
refusing to answer or to produce document; procedure, S. 485 ... 450
issue by certain superior Magistrates, or by Court of Session or High Court, of commission for examination of: commission to whom dirrected when witness is in Native State; duty of receiving officer, S. 503 466
in Presidency-town, commissions for examination of, S. 504 ... 467
examination of, upon interrogatories: parties may themselves examine, cross-examine and re-examine witnesses when commission is issued, S. 505 468
subordinate Magistrate may apply to District Magistrate for issue of commission, S. 506 ... ... *ib.*
examined upon commission: depositions of, to be sent to issuing Court; to be open to inspection of parties; may be read in evidence; to form part of the record, S. 507 469
for prosecution, examination of, in absence of accused, S. 512 ... 472
convenience of, ground for transfer of case by High Court or by Governor General in Council, Ss. 526, 527 ... 480, 484
material, power to summon, at any stage of proceedings, S. 540 492
payment of expenses of, S. 544 495
form of proclamation requiring attendance of, Sch. V. 5... ... 604
form of warrant in the first instance to bring up, Sch. V. 7 ... 606
form of summons to, Sch. V. 31 617
See *Medical Witness.*

WOMAN, breaking open apartment occupied by *parda nishin*, in order to effect an arrest, S. 48 76
mode of searching, S. 52 77
abducted, power to compel restoration of, S. 551 507
See *Enticing; Pregnant Woman.*

WORDS and expressions defined in Penal Code, S. 4 43
in charge taken in sense of law under which offence is punishable, S. 224 243
used in an unusual sense; jury to determine meaning of, S. 299 ... 305

WOUNDS, to be described in Police-officer's report on sudden or unnatural death, S. 174 178

WRECKS Instructions of Government of Bengal with regard to property in, S. 523 *note* 479

WRITING, definition of, S. 4 40
subordinate Police-officer deputed to make an arrest without warrant, to be furnished with an order in, S. 56 85
landholders, &c., to acknowledge receipt of warrants of arrest in, S. 78 97

PAGE

WRITING, proclamation for person absconding, to be in, S. 87 100
information concerning commission of cognizable offence, to be given in, or to be reduced by police to, S. 154 156
order by Police-officer requiring attendance of witnesses, to be in, S. 160 161
reducing into, evidence of witnesses at police investigation, S 161 162
statements of witnesses to police, when reduced into, not to be signed, S. 162 ... ... *ib.*
search-order to subordinate Police-officer, to be in, S. 165 ... 169
examination of complainant to be reduced into, S. 200 215
Magistrate not to examine complainant before transferring case, when complaint is presented in, *ib.* ... ... *ib.*
Presidency Magistrate may require complaint to be presented in, *ib.* *ib.*
summons to jurors and assessors, to be in, S. 328 321
order postponing or adjourning proceedings, to be in, S. 344 ... 334
examination of Medical Officer who has examined lunatic accused, to be reduced into, S. 464 433
WRITTEN, order absolute issued at once in urgent cases of nuisance, to be, S. 144 143
statements of claims as to possession; order to parties to dispute concerning land, &c., to put in, S. 145 146
instructions; furnishing, to Magistrate deputed to conduct local inquiry into dispute concerning land, &c., S. 148 ... 153
statement put in by accused during trial of warrant-case, to be filed by Magistrate, S. 256 265
WRONGFUL CONFINEMENT: process for the discovery of persons wrongfully confined, S. 100 110
under section 342, Penal Code; compoundable, S. 345 336
WRONGFUL RESTRAINT, compoundable, *ib.* ... ... *ib.*

Y.

YOUTHFUL OFFENDERS, confinement of, in reformatories, S. 399 389

Z.

ZANANA, breaking open, in order to effect an arrest, S. 48 76
ZILLAH MAGISTRATE signification of, S. 10 *note* 46